



2014 JUDICIAL SYMPOSIUM
ON
Domestic Violence
REFERENCE MATERIAL



OFFICE OF POLICY AND PLANNING • NEW YORK STATE COURTS

HON. JONATHAN LIPPMAN
CHIEF JUDGE OF THE STATE OF NEW YORK

HON. A. GAIL PRUDENTI
CHIEF ADMINISTRATIVE JUDGE

HON. LAWRENCE K. MARKS
FIRST DEPUTY CHIEF ADMINISTRATIVE JUDGE

NOVEMBER 20-21, 2014
NEW YORK MARRIOTT DOWNTOWN • 85 WEST STREET, NEW YORK, NY

2014 Judicial Symposium on Domestic Violence

NOVEMBER 20	DESCRIPTION
	Breakfast on Your Own
8:30 - 9:00 AM	Registration
9:00 - 9:15 AM	Welcome and Opening Remarks <i>Hon. Lawrence Marks, First Deputy Chief Administrative Judge</i>
9:15 - 10:30 AM	Predictable & Preventable: Lessons from DV Homicides <i>Casey Gwinn, President, National Family Justice Center Alliance</i>
10:30 - 10:45 AM	Break
10:45 AM - 12:00 PM	Post-Separation Abuse and the Enduring Effects of Domestic Violence <i>Sara Shoener, DrPH, Columbia University Mailman School of Public Health with Sheila Weir Schwanekamp, Esq.</i>
12:00 - 1:15 PM	Lunch
1:15 - 2:30 PM	Back to Basics: A Look at Domestic Violence Courts <i>Hon. Matthew D'Emic, Administrative Judge, Criminal Matters, Kings County Supreme Court</i>
2:30 – 2:45 PM	Break
2:45 – 4:00 PM	Understanding Defendant Victims: A Closer Look at Bad Facts <i>Michael G. Dowd, Esq.</i>
4:00 - 5:00 PM	Facilitated Breakout Sessions: <ul style="list-style-type: none"> • Firearms, Orders of Protection, & Bail - <i>Hon. Mary Anne Lehmann</i> • Domestic Violence and the Role of the Attorney for the Child Roundtable Discussion - <i>Rachel Hahn, Sheila Weir Schwanekamp, Harriet Weinberger</i>
5:00 PM	End of Day – Dinner on Your Own
NOVEMBER 21	DESCRIPTION
	Breakfast on Your Own
8:30 - 9:00 AM	Registration
9:00 - 9:05 AM	Welcome and Opening Remarks <i>Hon. Lawrence Marks, First Deputy Chief Administrative Judge</i>
9:05 - 10:20 AM	Impact of Domestic Violence on Children <i>Jordan Greenbaum, MD, Medical Director, Child Protection Center, Children's Healthcare of Atlanta with Sheila Weir Schwanekamp, Esq.</i>
10:20 - 10:35 AM	Break
10:35 - 11:50 PM	Manifestations of Gender-based Violence: Forced Marriage and Female Genital Mutilation <i>Engy Abdelkader, Sanctuary for Families Battered Women's Legal Services</i>
11:50 - 12:00PM	Closing Remarks <i>Hon. Lawrence Marks, First Deputy Chief Administrative Judge</i>
12:00 PM	End of Symposium

TABLE OF CONTENTS

POWERPOINT PRESENTATIONS	1
<i>PREDICTABLE & PREVENTABLE: LESSONS FROM DV HOMICIDES (NOTE FORMAT)</i>	
<i>POST-SEPARATION ABUSE AND THE ENDURING EFFECTS OF DOMESTIC VIOLENCE (NOTE FORMAT)</i>	
<i>IMPACT OF DOMESTIC VIOLENCE ON CHILDREN (OUTLINE FORMAT)</i>	
REFERENCE MATERIAL	45
<i>REFLECTIONS ON AND LESSONS LEARNED FROM DOMESTIC VIOLENCE HOMICIDES, CASEY GWINN, ESQ.</i>	
<i>TWO-PARENT HOUSEHOLDS CAN BE LETHAL, SARA SHOENER, DRPH</i>	
<i>THE TRIALS, TRIBULATIONS, AND REWARDS OF BEING THE FIRST, JOHN M. LEVENTHAL, DANIEL D. ANGIOLILLO, MATTHEW J. D'EMIC</i>	
<i>BATTERED WOMAN'S DEFENSE" ITS HISTORY AND FUTURE, MICHAEL G. DOWD, ESQ.</i>	
<i>DOMESTIC VIOLENCE, ORDERS OF PROTECTION AND FIREARMS, YOUR CHANCE TO MAKE A DIFFERENCE, HON. MARY ANNE LEHMANN</i>	
<i>SAVING LIVES: DOMESTIC VIOLENCE CASES, ORDERS OF PROTECTION, AND FIREARMS, HON. MARY ANNE LEHMANN</i>	
<i>REPRESENTATION BY THE ATTORNEY FOR THE CHILD, HARRIET R. WEINBERGER, ESQ.</i>	
<i>ATTORNEY FOR THE CHILD DOMESTIC VIOLENCE TRAINING PROGRAM AGENDAS</i>	
<i>DOMESTIC VIOLENCE, DEVELOPING BRAINS, AND THE LIFESPAN, NEW KNOWLEDGE FROM NEUROSCIENCE, LYNN HECHT SCHAFFRAN, ESQ.</i>	
<i>FEMALE GENITAL MUTILATION IN THE UNITED STATES, A REPORT BY SANCTUARY FOR FAMILIES</i>	
FACULTY BIOGRAPHIES	198

THIS PROJECT WAS SUPPORTED BY GRANT No. VW14-1000-Do AWARDED BY THE OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE TO THE STATE OF NEW YORK, DIVISION OF CRIMINAL JUSTICE SERVICES (DCJS). POINTS OF VIEW OR OPINIONS EXPRESSED IN THIS PUBLICATION/PROGRAM/EXHIBITION ARE THOSE OF THE AUTHOR(S) OR PRESENTER(S) AND DO NOT NECESSARILY REPRESENT THE OFFICIAL POSITION OR POLICIES OF THE DEPARTMENT OF JUSTICE OR DCJS.

Predictable & Preventable: Lessons from DV Homicides

Casey Gwinn

National Family Justice Center
Alliance

Family Justice Center Institute
Training Institute on Strangulation Prevention
Camp HOPE California
Leadership Training Institute
Alliance for HOPE International
Justice Legal Network



“Lessons Learned From Domestic
Violence Homicides”

Casey Gwinn, Esq.
President, National Family Justice Center Alliance

November 20, 2014

Websites: www.familyjusticecenter.com
www.strangulationtraininginstitute.com
www.camphopecalifornia.com

National Family Justice Center Alliance www.familyjusticecenter.com



Kayden Brooke Orender



National Family Justice Center Alliance www.familyjusticecenter.com



Predictable & Preventable: Lessons from DV Homicides

Casey Gwinn



When the System Fails...

DA Explains Why It's Necessary To Compel Testimony From Domestic Violence Victims

Posted Wednesday, June 4th, 2014 at 3:05 pm
Original reporting by
by Rob Henderson

Local News, Today's Top Stories



For the second time, the Kennebec County District Attorney has had the victim in a domestic violence case arrested to make sure they show up to court to testify.
Richard Kendall was arrested on domestic violence charges last week, after he beat up his wife in Oakland in September of last year. District Attorney Mueggen Maloney says that conviction may not

National Family Justice Center Alliance www.familyjusticecenter.com

When We Fail at Coordinated Intervention in the Criminal Justice System...

Women, Men, Children, Family Members, Judges, and Police Officers Die...





In Memory...

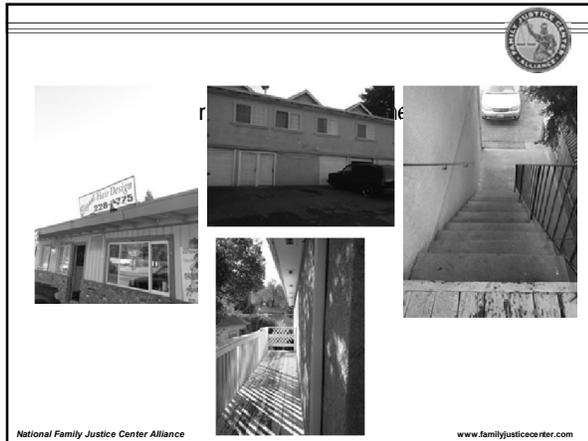


Sgt. Paul Starzyk

National Family Justice Center Alliance www.familyjusticecenter.com

Predictable & Preventable: Lessons from DV Homicides

Casey Gwinn





We know officers are killed in the line of duty...

But we rarely investigate the relationship history of the killer...

National Family Justice Center Alliance www.familyjusticecenter.com

Predictable & Preventable: Lessons from DV Homicides

Casey Gwinn



2013 Treasure Valley (ID) Study

- Evaluated ten officer-involved critical incidents where officer shot a suspect or suspect shot an officer
- 80% of suspects with domestic violence history
- Non-fatal strangulation history in 30%
- Based only on public records history
- More research needed
- We all should be looking for it/tracking it

National Family Justice Center Alliance www.familyjusticecenter.com



Riverside County District Attorney's Office 2013 Study Gerald Fineman, J.D.

- Law enforcement officers killed in the line of duty
- 1993-2013
- 50% of officers were killed by a criminal suspect with a public records act history of strangulation assault against a woman in a prior relationship

National Family Justice Center Alliance www.familyjusticecenter.com

We Recognize Killers When We See Them...

We have missed the intersections...



Predictable & Preventable: Lessons from DV Homicides

Casey Gwinn



We Know What Grows in Our Communities...



Ronald Wayne Frye killed his landlord over a rent dispute...

National Family Justice Center Alliance www.familyjusticecenter.com

We don't spend enough time connecting the final product...

Back to the roots...





Ronald Wayne Frye, Age 9
October 1968



Executed in North Carolina on August 31, 2001

National Family Justice Center Alliance www.familyjusticecenter.com

Predictable & Preventable: Lessons from DV Homicides

Casey Gwinn

Don't forget the children...



The Dumas Children

National Family Justice Center Alliance www.familyjusticecenter.com

And we remember...



Rose Jovero

National Family Justice Center Alliance www.familyjusticecenter.com



Judge Rowland Barnes (Court clerk Julie Brandau and Deputy Hoyt Teasley)

National Family Justice Center Alliance www.familyjusticecenter.com

Predictable & Preventable: Lessons from DV Homicides
Casey Gwinn

Rowlett, Texas June 22, 2010



Judge Belinda Loveland

National Family Justice Center Alliance www.familyjusticecenter.com

Thank you, Barry Goldstein!



National Family Justice Center Alliance www.familyjusticecenter.com

Bishop Desmond Tutu

What is Justice?



Predictable & Preventable: Lessons from DV Homicides

Casey Gwinn



Themes Today

- DREAM BIG!
- Come together and stick together
- Be the best!
- Innovate, innovate, innovate
- Stay accountable to survivors
- Working together changes the world for victims and their children and saves lives

National Family Justice Center Alliance www.familyjusticecenter.com

Other Resources from the Alliance





www.familyjusticecenter.com



National Family Justice Center Alliance www.familyjusticecenter.com

Predictable & Preventable: Lessons from DV Homicides

Casey Gwinn



Findings from LAM/FJC/MA Model RS

www.familyjusticecenter.com

- Victims more likely to participate later with victim advocacy at the scene (Maryland Lethality Assessment Model)
- Victims more likely to participate later if all needs are met (FJC Research)
- Victims more likely to participate if Defendant stays in jail
- Homicides go down when collaboration and coordination is strong
- Family court and criminal court coordination improves outcomes and offender accountability

Online Resource Library

- Felony convictions go up in MDT/FJC/MA Models
- Evidence always gets better in CCR, MDT, FJC/MA Models
- Follow up investigation is crucial to long-term case success in criminal justice system
- Co-location of all professionals in an integrated approach creates mutual accountability and better short and long-term outcomes

National Family Justice Center Alliance
www.familyjusticecenter.com



www.strangulationtraininginstitute.com



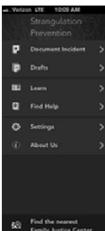
National Family Justice Center Alliance
www.familyjusticecenter.com



New iPhone APP "Document It"

A Mobile App to Document Near-Fatal Strangulation Cases
The mobile application will assist professionals from **all disciplines** and individuals who are "choked" by an intimate partner to document multiple incidents using:

- Photo, Video, and Audio capture
- User-friendly survey of possible symptoms and injuries
- Text area to tell the story of the incident
- Signed consent for release of information; and
- Ability to send a full report to law enforcement
- Confidential storage



National Family Justice Center Alliance
www.familyjusticecenter.com

Predictable & Preventable: Lessons from DV Homicides

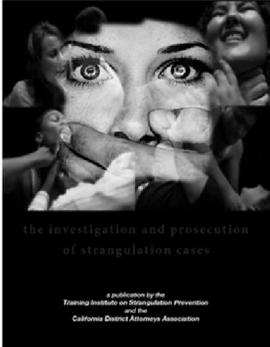
Casey Gwinn



Alliance Publishes New Manual!

IPV Strangulation Crimes

- IPV Strangulation Crimes Manual – Developed by the National Family Justice Center Alliance/Training Institute on Strangulation Prevention
- In Partnership with the California District Attorneys Association
- Manual includes chapters on advocacy, investigations, prosecution, and legislation, among other topics



the investigation and prosecution of strangulation cases
a publication by the Training Institute on Strangulation Prevention and the California District Attorneys Association

National Family Justice Center Alliance
www.familyjusticecenter.com



Join us!
Go to www.familyjusticecenter.com to Register!

SAVE THE DATE!

Health Matters, Hope Heals: What Every Professional Needs to Know About Trauma

15th Annual International Family Justice Conference



Join Us:
April 21-23, 2015
Paradise Point Hotel and Spa
San Diego, CA

National Family Justice Center Alliance
www.familyjusticecenter.com



We Know When Women and Men Die in Domestic Violence Homicides...

Which agencies and services interacted with victims and/or perpetrators?

Agency/Service	Victims	Perpetrators	Notes
Law Enforcement	100%	100%	...
Healthcare	85%	75%	...
Domestic Violence Services	70%	60%	...
Child Welfare	60%	50%	...
Probation/Parole	50%	40%	...
Fire Department	40%	30%	...
Public Health	30%	20%	...
Community Services	20%	10%	...
Religious Organizations	15%	5%	...
Other	10%	5%	...

National Family Justice Center Alliance
www.familyjusticecenter.com

Predictable & Preventable: Lessons from DV Homicides
Casey Gwinn

Domestic Violence Homicides
are Predictable...



If something is predictable, it is
preventable...

It is only a question of resources
and priorities...





Lessons Learned from DV Homicides

- Lethality and Risk Assessment Must Be Central To Everyone...
- Aggressive Intervention with the Most Dangerous Offenders is Critical
- FJCs, MDTs, CCRs, CACs, and other Collaborative Approaches Change the Ending
- Child Welfare and Domestic Violence Professionals Must Come Together
- Workplace Violence Education and Prevention
- True Homicide Prevention Always Focuses on the Children

National Family Justice Center Alliance www.familyjusticecenter.com

Predictable & Preventable: Lessons from DV Homicides
Casey Gwinn



Journal of Emergency Medicine:

- **Victims of prior strangulation are 800% more likely of becoming a homicide victim.**
- **(Glass, et al, 2008).**

National Family Justice Center Alliance www.familyjusticecenter.com



Violence Policy Center

- Most women are killed by someone they know and most likely with a gun.
- 393 women killed with a gun
- 3 out of 4 were handguns

National Family Justice Center Alliance www.familyjusticecenter.com



Violence Policy Center

- Most women are killed by someone they know and most likely with a gun.
- 393 women killed with a gun
- 3 out of 4 were handguns
- Large majority of victims of strangulation who are later murdered are killed with a legally possessed handgun.



National Family Justice Center Alliance www.familyjusticecenter.com

Predictable & Preventable: Lessons from DV Homicides

Casey Gwinn



Congratulations to San Mateo County (CA)!



- This is Homicide Prevention...
- DV Firearm Compliance Unit
- Seize, Store and Destroy
- Training
- Research

National Family Justice Center Alliance www.familyjusticecenter.com



American Journal of Public Health Study of DV & Guns

- DV offenders with firearms are **5-8 times more likely to kill** their partners than those without, and nearly **8 times more likely to use firearms in threats**.
- 665 firearms were recovered from 164 people in San Mateo and Butte counties in California.
- The new screening protocol worked in improving the process for retrieving weapons from DV offenders. No reports of injury or death.

■ UC Davis article: <http://www.ucdmc.ucdavis.edu/publish/news/newsroom/8529>
■ Link to journal: <http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2013.301484>

National Family Justice Center Alliance www.familyjusticecenter.com



Looking for the Roots

- Fatherless children; Abandonment; Decline of the nuclear family; Decline of religion; Increase in divorce; Exposure to violence and abuse (Fagan, 1995)
- Support: 10% increase in community in single parent homes – 17% increase in delinquency cases; Intact two parent families raise healthy, non-violent children even in high crime areas.
- Racism; Poverty; Lack of education; Exposure to violence and abuse;
- Support: High rates of incarceration for children of color; As education declines, incarceration increases;
- But this still does not go to the root...

National Family Justice Center Alliance www.familyjusticecenter.com

Predictable & Preventable: Lessons from DV Homicides
Casey Gwinn

The Root of All Crime

Traces back to the brain...to the motor...the command center for every human being...



“It is the not the finger that pulls the trigger. It is the brain. It is not the penis that rapes. It is the brain.”

Dr. Bruce Perry

Bruce Perry, Texas





“In all my years as a District Attorney, I never prosecuted a capital murder case where the defendant did not have a serious history of child abuse.”

Mike Green
New York State Division of Criminal Justice Services
Former Monroe County District Attorney
(Rochester, New York)

National Family Justice Center Alliance www.familyjusticecenter.com

Predictable & Preventable: Lessons from DV Homicides
Casey Gwinn

"You're wrong. You're just dead wrong..."

El Centro, CA
2013



"In the 12 years I have run four prisons for the state Department of Corrections, I have never personally met an inmate who did not grow up in a home with child abuse, or domestic violence, or some mix of both."

California State
Department of Corrections Manager





Ghosts from the Nursery

"If the caregiving relationship is inadequate or traumatic, especially in the first thousand days of life when the brain is chemically and structurally forming, the part of the brain that allows the baby to feel connected with another person can be lost or greatly impaired. A child may mature lacking the ability to attach or to relate in any profound way to others. Absent adequate nurturing by an emotionally competent caregiver, the baby faces an unpredictable tide of unregulated emotions... We have yet to recognize that if a child's experiences are pathological and are steeped in chronic fear, the very capacities that mitigate against violent behavior – including empathy and the capacity for self-regulation of strong emotions – can be lost."
Robin Karr-Morse and Meredith Wiley

National Family Justice Center Alliance www.familyjusticecenter.com

Predictable & Preventable: Lessons from DV Homicides

Casey Gwinn


Latest Research on the Children of Domestic Violence Homes

- Study was based on the National Youth Survey Family Study, a national sample of 1,683 families, and followed 353 second-generation parents and their third-generation offspring over a 20-year period.
- Children from 3 of 4 families ended up becoming victims as adults
- Children from 4 of 5 families ended up becoming perpetrators as adults
- http://dev.cjcenter.org/_files/cvi/Generation%20Cycles%20IPVforweb.pdf
- http://dev.cjcenter.org/_files/cvi/Gang_Crime_Victimization_final.pdf

National Family Justice Center Alliance www.familyjusticecenter.com


Focus on the Role of Men and Boys to Hold Men and Boys Accountable



National Family Justice Center Alliance www.familyjusticecenter.com

From a Shoe Box to...



Predictable & Preventable: Lessons from DV Homicides

Casey Gwinn





American Bar Association Research Study

- Did the victim want the court to just let him go? Yes 4%/ No 96%
- Did the victim want him to go to court for what he did? Yes 55%/ No 45%
- Did the victim think it was good the case was prosecuted? Yes 90%/ No 10%
- Would the victim call the police if he harmed her in the future? Yes 79%/ No 11%/ Maybe 10%
- Overall conviction rate, 96%
- Jury Trial Conviction Rate on Misdemeanor DV Cases: 70%



American Bar Association Study

- Still with the defendant? Yes 83%/ No 17%
- Has the D threatened to harm you since his conviction? Yes 14%/ No 86%
- Has the D damaged your property since his conviction? Yes 8%/ No 92%
- Has the D been physically violent with you since his conviction? Yes 9%/ No 91%
- Has the D been verbally or emotionally abusive since his conviction? Yes 37%/ No 63%

Predictable & Preventable: Lessons from DV Homicides
Casey Gwinn

Alex



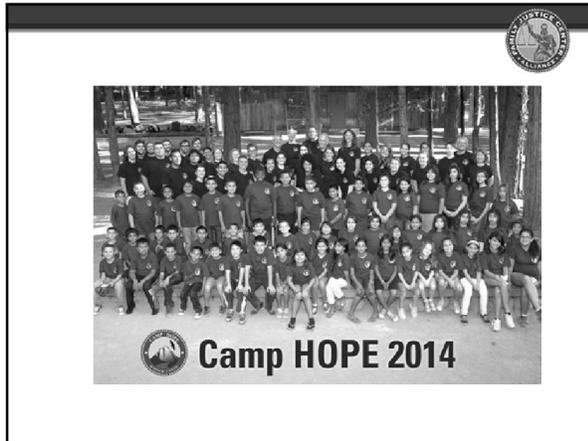




www.facebook.com/camphopecalifornia
www.camphopecalifornia.com

Predictable & Preventable: Lessons from DV Homicides

Casey Gwinn



Camping and Mentoring

- What will you do together besides intervention?
- What will your prevention strategy include?
- How can the Camp HOPE California model benefit your children receiving services after exposure to DV?
- OU- Tulsa Evaluation Report 2013 – Camping and Mentoring Produces HOPE in Children!
- HOPE Scale Pre-Post: 25.5 to 27.6

Impact of Camp Hope on Children's Hope.

Pre-Test Post-Test Comparison

In order to examine the change in hope scores from pre-testing to the post test, we conducted a Paired-Samples T-Test to determine if the change was statistically significant. The results indicated a statistically significant increase in the means ($t = -3.856$, $df = 110$, $p < .001$). Further more, the magnitude of this change is considered small ($d = -.37$).

Group	Mean	Std. Dev.	df	T value	Significance
Pre-Hope	25.5	5.9	110	-3.856	< .001*
Post-Hope	27.6	5.5			

N = 94, p < .05

Predictable & Preventable: Lessons from DV Homicides

Casey Gwinn







Predictable & Preventable: Lessons from DV Homicides

Casey Gwinn



Reminders

- The Most Effective Homicide Prevention Happens Early...
- We Need to be Experts in Trauma...
- We Must Focus on the Children
- We Must Reject Silos
- We Must See the Connections and Intersections
- Social and Public Policy Must Challenge Us To Engage "Before" and "Earlier"
- We must engage in intervention and prevention simultaneously
- There are all the resources we need to dramatically reduce intimate partner violence homicides in our lifetime...
- We must dream bigger...we must aspire for more...

National Family Justice Center Alliance www.familyjusticecenter.com

Thank you for working to change the world:



Casey Gwinn, Esq.
President
FJC Alliance
casey@nfca.org

National Family Justice Center Alliance www.familyjusticecenter.com

Post-Separation Abuse and the Enduring Effects of Domestic Violence

Sara Shoener, DrPH

POST-SEPARATION ABUSE AND
THE ENDURING EFFECTS OF DOMESTIC VIOLENCE

Sara Shoener, DrPH
sjs2162@columbia.edu

2014 Judicial Symposium on Domestic Violence

Agenda

Study background

Overview of methodology

Study results

Discussion

A Public Health Linchpin

Family violence has been linked to higher incidence of

HIV and other STIs	Depression	Alcohol abuse	Urinary and vaginal infections
Migraines	Substance abuse	Low birth weight	Digestive dysfunction
Cigarette smoking	Asthma	Bladder and kidney infections	Cardiovascular disease
Fibromyalgia	Joint disease	Chronic pain	Suicidal behavior

Post-Separation Abuse and the Enduring Effects of Domestic Violence

Sara Shoener, DrPH

In the US:

- 35% of women experience IPV
- 1 in 4 women experience severe physical violence by an intimate partner
- 1 in 9 women are raped by an intimate partner (CDC, 2011)

Globally, 35% of women experience IPV (WHO, 2012)

What has worked to reduce violence in families in the United States?

What will work in the future?

Research Questions

What are IPV survivors' most significant barriers for achieving long-term safety when

- They remain with their abuser?
- They leave their abusers?
- They have left their abusers?

How are IPV survivors' barriers to long-term safety addressed in the domestic violence service system?

- What are the institutional pathways through which women navigate to find safety?
- What factors shape who receives domestic violence services and how are they provided?

Post-Separation Abuse and the Enduring Effects of Domestic Violence

Sara Shoener, DrPH

Field Site Profiles			
Site	1	2	3
Population	<45,000	215,000	>2,000,000
Population/square mile	50	500	25,000
White (% of population)	98	72	44
Median household income (\$)	45,000	53,000	51,000
Median income full time worker male (\$)	40,000	47,500	46,500
Median income full time worker female (\$)	29,000	37,000	43,000

Data Collection Methods	
<p>In-depth life history interviews with 31 intimate partner violence survivors</p> <p>30 interviews with social service practitioners and professionals</p> <ul style="list-style-type: none"> • Police officers, attorneys, domestic violence service providers, job center coordinators, etc. <p>Two years of participant observation and fieldnotes</p> <ul style="list-style-type: none"> • in criminal trials, emergency shelters, custody proceedings, protection order hearings, housing courts, domestic violence service organizations, etc. 	

Interview Sample: Survivors			
Race		Annual income	
Caucasian/White	23	<\$10,000	13
African American/Black	4	\$10,000-\$20,000	10
Hispanic/Latina	2	\$20,000-\$30,000	5
Multiracial	2	\$30,000-\$50,000	2
Age		>\$50,000	1
18-25	5	Number of children	
26-35	8	0	1
36-45	8	1	8
46-55	10	2	7
Time separated from abuser		3	9
Not separated	5	4	3
< 6 months	5	> 5	3
> 6 months	21		

Post-Separation Abuse and the Enduring Effects of Domestic Violence

Sara Shoener, DrPH

Post-Separation Abuse and Collateral Damage

- social networks
- children
- economic security

We know that...

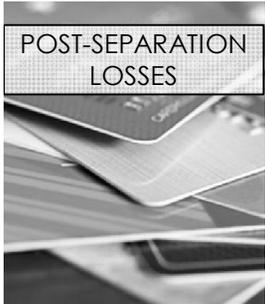
Domestic violence is not just physical violence, but a pattern of coercive control that includes physical, and psychological, financial abuse

+

Domestic violence survivors' risk of severe and lethal physical violence increases post-separation

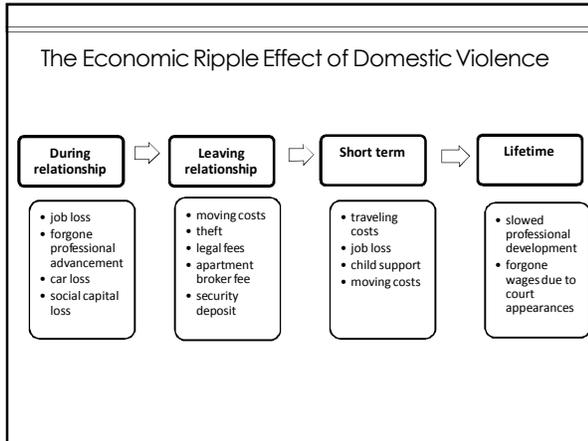
- **economic security**
- social networks
- children

"I'm pretty much self-supporting now except for every time I lose my job, because I have to go to court."



Post-Separation Abuse and the Enduring Effects of Domestic Violence

Sara Shoener, DrPH



Long-Term Economic Effects of Intimate Partner Violence

COST	LONG-TERM EFFECTS
Psychological costs	<ul style="list-style-type: none"> • Fear of being in public • Limited ability to "present well" in job interviews • Limited capacity to focus on job responsibilities
Physical costs	<ul style="list-style-type: none"> • Decreased mobility • Decreased dexterity • Altered physical appearance • Limited sensory ability (e.g., sight, hearing)
Professional costs	<ul style="list-style-type: none"> • Ruined professional credibility • Restricted movement to jobs in other communities • Decreased employment opportunities due to criminal record
Opportunity costs	<ul style="list-style-type: none"> • Forgone opportunities for education • Forgone opportunities for career-enhancing employment • Forgone opportunities for investments and property acquisition
Financial costs	<ul style="list-style-type: none"> • Unpaid debt • Ruined credit • Ineligibility for public benefits • Federal tax complications due to identity theft

Opportunity Costs: Lola

I got into college, I got a scholarship, the whole nine yards [...] And the judge made a decree that I could not leave the area without his permission. Do you know what the reasoning was on that? Because of his son. Because I had his son and that would prevent him from having easy access to visitations. Which made no sense to me because 99% of the time he wasn't picking up my son.

Post-Separation Abuse and the Enduring Effects of Domestic Violence
Sara Shoener, DrPH

Psychological Costs: Marie

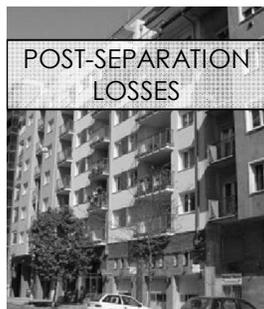
I remember I couldn't process information. I remember times when I couldn't read a form without just crumbling. I didn't know how to read a form. I didn't know how to make a phone call. I would sit in piles of phone calls and work and I would just stare at it because I couldn't wrap my mind around anything else.

Professional Costs: Caroline

A lot of [customers] just got really mad and they just left [...] There were people that had set up for weddings. There were some people that set up for prom. There were some people that set up for serious things. And I didn't show up for it. Because I didn't know about it. Some of those people were long-time customers that I've been doing for like 14 years. So, he was just like, he destroyed it on me.

- economic security
- **social networks**
- children

"I felt completely rejected and alone. And I thought, if he can turn my support system from three states away against me, what chance do I have? Where can I go where he won't attack me and my support system?"



Post-Separation Abuse and the Enduring Effects of Domestic Violence
Sara Shoener, DrPH

Targeting Network Members: Lily

Then this whole investigation happened, and we broke up. And I was so upset. He had to be interviewed by Children and Youth and he had to get investigated. I really liked him too. I think I will always grieve that. He's scared. I don't blame him.

Exacerbating the Effects of Trauma: Carla

**It's like my house is on fire,
and even though I'm
screaming for help, no one will
respond. They just focus on the
fact that I'm screaming.**

Encouraging Self-Isolation: Janie

It really took a serious mental toll on me, and I stopped being friends with all my friends. I couldn't trust nobody. I felt like everybody was telling [my ex-husband] something because he was finding out things, and then the court system is telling me, "Well we didn't tell him that." So I'm blaming people I know.

Post-Separation Abuse and the Enduring Effects of Domestic Violence
Sara Shoener, DrPH

Destroying Reputation: Lola

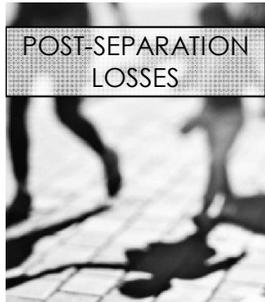
I was at a secondhand store and buying a used couch from somebody who was considered a crack addict in town. Apparently [my ex-husband] drove by when I was buying the couch. And so I was fraternizing with a crack addict. And then one time I was out at a bar. It was a friend's birthday and I bought her a shot. Well, then the next thing you know I'm dumping my kids someplace and I'm out drinking and things like that. It just went on and on and on.

Destroying Reputation: Sophie

He was going around to the kids' schools and then their doctors, telling them I was trying to kill the children [...] I was finally making some room at [my son's school]. People were finally starting to talk to me. I was actually making friends. And he came and said, 'My ex-wife is mentally ill and she will try to come here and she will try to tell you this and that. But I just want to let you know that she tried to kill my children.'

- economic security
- social networks
- **children**

- Threatening/harming the children
- Turning the children against her
- Taking the children



Post-Separation Abuse and the Enduring Effects of Domestic Violence
Sara Shoener, DrPH

Janie

Staying	Leaving
<i>I knew that we would never work out because I didn't have any love for him, but I tried to give him a lot of chances to be a father to his son.</i>	<i>What pushed me over the edge was that he threw a knife at me. And my son was turning two. I just thought, I don't want my son to be that way [...] The same reason that I was trying to make it work with him was the same thing that pushed me away.</i>

Janie

Every six months the court allows him to file paperwork all over the place. So he goes and files this paperwork just to rile me up. And then he doesn't show up at the hearings [...] So he basically still has control. He still wins at the end of the day no matter what you're looking at because the whole time the [protection order] was on him, he got to harass me and take me to court.

Janie

Of course it sucked what he was doing [...] But the court system made it so much worse. Because at the end of the day, they have the authority to tell you what you're going to do with your kid [...] They made it hell for me. They made it horrible. It was the worst experience that I've ever had to go through.

Post-Separation Abuse and the Enduring Effects of Domestic Violence
Sara Shoener, DrPH

Manipulating the Court System: Carla

He tricked the court into thinking he was afraid that I was a flight risk. So he got the court to keep me in my place when he couldn't do it on his own anymore.

Abusing the Children: Grace

My daughter would hear him talking at night to my son, 'Your mother is a piece of shit, your mother doesn't love you, she left you, she didn't want you, she sold you.' I found out in the court hearing today that he threw her through a wall when she wouldn't sign a letter saying she heard me say, 'I want to sell them.'

That's when the abuse carried over to them. And that's when I moved back. My daughter broke down on the phone one night and said, 'Mommy, why did you leave me in this nightmare? Two hours later I pulled into her driveway with everything I owned in the car.'

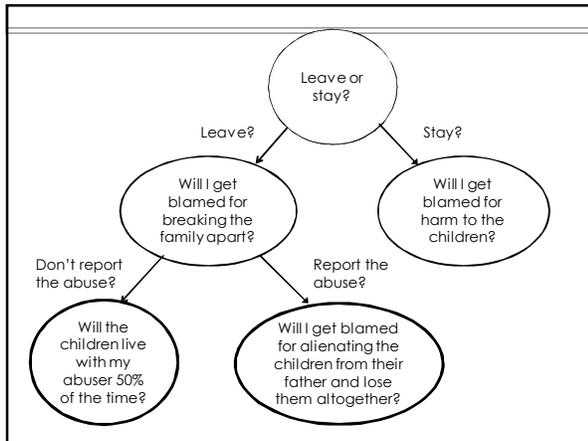
Taking the Children: Karen

He had a place, he was stable, he wooed them. They loved him. Even the children's caseworker. They looked down on me. They looked at me as a junkie. And that was the hardest thing because I knew in my heart that I love my kids and I was doing what was best for my kids. I was getting stuck in the system. And when they gave custody to Ed, I was devastated. [...] I called him and I said, "I really want to reconcile. I have two years of sobriety, it was all me, the marriage ended because I was taking the pills." And he let me back in.

Post-Separation Abuse and the Enduring Effects of Domestic Violence
Sara Shoener, DrPH

Catch-22 of Protective Parenting: Rose

I tried to get my kids out before things got really bad, and the court was like, where are the bruises? It's not so bad. Why are you alienating the kids from dad? Next time I went they said, why didn't you get out? Why didn't you protect the kids? They want you to get away from the abuse and then they make it so hard.



Discussion, and thanks.

THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN

JORDAN GREENBAUM, MD

1 **Impact of Domestic Violence on Children**

2 **Outline**

- ACE studies
- Research on long term effects of witnessing DV
- Neurobiology and toxic stress
- Fear-conditioning
- Trauma-informed care

3 **The ACE studies**

- Collection of studies showing links between early childhood adversity and adult problems
- Collaboration between CDC and Kaiser Permanente, San Diego
- Over 17,000 adults in final sample
- ACE = Adverse childhood experience

4 **ACE Categories**

- Abuse
 - Physical
 - Sexual
 - Emotional
- Neglect
 - Emotional
 - Physical
- Household dysfunction
 - Substance abuse
 - Mental illness
 - Domestic violence
 - Criminal household member
 - Parental marital discord (separated or divorced)
- Ace Score: 0 to ≥ 4

5 **ACE Score**

6 **Cumulative Effect of ACEs**

7 **What about DV in particular?**

- Kids exposed to DV often experience multiple ACEs
- Gender differences: aggression toward others
- Evidence that children model adult behavior
- IPV also linked to PTSD, depression (girls > boys), perpetration of IPV when adults; alcohol-related disorders, drug use/abuse, cigarette smoking, risky sexual behaviors, lower test scores in school

8 **How can early adversity (DV) lead to problems in adulthood?**

Effects of toxic stress on brain development

THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN

JORDAN GREENBAUM, MD

9 **Brain Basics**

- Neuron Maturation
 - Growth of connections *from* cells
 - Growth of connections *to* cells
 - Pruning unused connections
 - Increasing speed/efficiency
 - Turning genes on/off

10 **Prenatal Brain Development**

- Most neurons present at birth
- From birth to 5 years, brain triples in mass
- Developmental progress
 - Brainstem to cortex
 - Low level before high level
-

11

12 **Brain Maturation**

- Location is everything!
- Effect of experience also depends on timing

13 **Sensitive Periods**

- Windows of opportunity
 - Effects of experience on brain are very strong
 - Vary with area of brain
 - Initial experience is more influential
- Plasticity persists (it's never too late!)

14 **Neural Plasticity**

15 **Prefrontal Cortex (PFC)**

- Self regulation
- Emotional regulation
- Executive functioning
- Interacts with amygdala

16 **Development of Executive Function**

- 3 dimensions:
 - Working memory
 - Inhibitory control
 - Mental flexibility
- Starts near end of first year
- By age 3, a child can engage in tasks with 2 rules
- Proceeds rapidly throughout childhood, adolescence, into 20's
- Underlies school readiness, social development

THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN

JORDAN GREENBAUM, MD

17 **Development of Executive Function**

18 **Amygdala**

- Roles
 - Processing emotions
 - Identifying emotion related to facial expressions
 - Evaluating emotional significance of stimuli
 - Assessing threat
 - Initiating stress response
 - Regulated by hippocampus and prefrontal cortex



19 **Hippocampus**

- Learning and memory
- Content of emotional memories
- Sends info to amygdala
- Long period maturation

20 **Normal Child Development**

- Infancy
 - Ability to regulate behavior, emotion, physical functioning
 -
 - Attachment develops

- Caregiver input is critical

21 **Normal Child Development**

- Toddler/Preschooler
 - Developing sense of self
 - Improved self-regulation
 - Start to delay gratification
 - Talk about causes of emotion
 - Can hide emotions
 - Very concrete thinking
 -

22 **Normal Child Development**

- Middle childhood
 - Increase ability to regulate behavior & emotion
 - Reflect on consequences before acting
 - Consider consequences of expressing emotion
 - Peer relationships very important
 - Developing abstract thought

•

THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN

JORDAN GREENBAUM, MD

23 **Normal Child Development**

- Adolescence:
 - More self-aware and self-reflective than children
 - Develop improved
 - Working memory
 - Selective attention
 - Problem-solving
 - Show increased risk-taking behavior
 - Impulsive behavior
 -

24

25 **Let's Talk About Stress!!**

26 **Hot Spots for the Human Stress Response**

27 **Sympathetic Nervous System**

28 **Hypothalamic-Pituitary-Adrenal Axis**

- Cortisol secreted within minutes
- Effects seen for hours

29 **So, how does this work?**

30

31 **Toxic Stress**

- Toxic stress:
 - Strong, frequent or prolonged
 - Often uncontrollable
 - No supportive adult
-

32 **Stress Response**

- Particularly malleable during fetal and early childhood periods
- Experience influences later responses to stress (threshold for reacting, ability to turn off, strength of response)
- Stress hormones influence expression of genes in cells, and cause stable changes in function

33 **Toxic Stress**

- Can change the architecture, function of brain
 - Damage or kill cells
 - Alter connections (brain adapts to environment)
 - Exert change via epigenetics
-

34 **Environmental Influence on Brain and Body Function**

THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN

JORDAN GREENBAUM, MD

- Epigenetics:
 - Modifications to the genome that affect cell function but do not involve a change to DNA sequencing
 - Change gene activity in a cell (gene turned on or off)
 - DNA methylation
 - Histone modification

35

36

37 **Fear-Conditioning**

- Involves amygdala, hippocampus and prefrontal cortex
- Strong or prolonged fear leads to conditioning
 - Neutral stimulus associated with aversive one that causes fear
 - Gradually neutral stimulus comes to elicit fear
 - Can generalize further to other neutral stimuli
- Can be learned early in life

38 **Fear Conditioning**

- Stress hormones
 - Contribute to generating memory of danger
 - Inhibit extinction of memory
- Emotional memory of fearful event can be very strong, very stable over time

39 **Generalized Fear-Conditioning**

40 **Generalized Fear-Conditioning**

- Increases fear, stress, anxiety in 'safe' situations
- Impacts social interaction, behavior, learning
- Prefrontal cortex damage is key
- Can occur even in infants
- Removing the danger doesn't 'fix' the child

41 **Fear Extinction**

- Fear not simply forgotten
- Requires active 'unlearning'
- Process distinct from fear-conditioning
- PFC regulates amygdala, decreasing response to fear
- Can only occur later in life, when certain areas mature (PFC)
-

42

43 **How can we help? Trauma-Informed Care**

44 **Trauma Reactions Depend On...**

- Child's

THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN

JORDAN GREENBAUM, MD

- Age, developmental stage
- Perception about danger of event
- Victim vs witness status
- Relationship to victim, perpetrator
- Prior experiences with trauma
- Adversities in aftermath of trauma
- Availability of protective, responsive adults

45 **Symptoms of Traumatic Stress**

- Symptoms may not be manifest immediately
- Variable period to resolution
- Some children don't show obvious symptoms
- Over control may be as symptomatic as acting out
- Still waters....
-

46 **Potential Signs of Traumatic Stress**

- Physical
 - Nightmares, sleep problems
 - Altered appetite, eating patterns
 - Chronic pain complaints
 - Irritable bowel syndrome
- Emotional
 - PTSD
 - Depression, withdrawal
 - Anxiety/panic
 - Dissociation, numbness

47 **Potential Signs of Traumatic Stress**

- Behavioral
 - Regression in developmental milestones
 - Refusal to separate from caregiver
 - Hyperactivity, poor attention
 - Re-creating trauma
 - Abrupt change in behavior or new fears
 - Anxiety about safety of self and others
 - Focus on death and dying
 -
 -
-

48 **Potential Signs of Traumatic Stress**

- Behavioral
 - Hyperarousal
 - Aggression, antisocial behavior

THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN

JORDAN GREENBAUM, MD

- Hypervigilance
- Lack of control of mood, behavior
- Misinterpretation of others' intentions
- Distrust of others
- Difficulty with authority, criticism

49 **Assess Effects of Traumatic Stress**

- How is child doing in school?
- How does child interact with peers? With adults?
- How do they view themselves and the world?
- High risk behaviors?
- Emotional disorders?

50 **Functions of Conduct Problems**

- Reduce danger
- Engage parent
- Communicate need or feeling
- Shape caregiver behavior
- Maximize chance of self-survival
-

51 **Provide Therapies That Are Effective...**

- Remember brain plasticity!
- Children (and adults) can change!
- Effective therapies exist
- Need therapist experienced in treating traumatic stress
- The earlier the better....

52 **My contact info:**

Jordan Greenbaum, MD
Cell: 404-790-0499
jordan.greenbaum@choa.org
call anytime!



“Reflections on and Lessons Learned from Domestic Violence Homicides”

Presented by Casey Gwinn, Esq.
President, National Family Justice Center Alliance
November 20, 2014
New York City, New York

Domestic violence homicides are predictable. If something is predictable, it is preventable – it is only a matter of resources and priorities. This presentation will focus on five key lessons learned in recent years as we have focused on the reduction of domestic violence homicides in America. But first we should focus on a few key facts.

First, there is virtually always a pattern of violence and abuse with risk markers before a domestic violence homicide. Couples do not go from happy, healthy, and functional to murder or murder-suicide without a series of events that point the path toward what is coming. Generally, those risk markers were ignored or people seeing them did not know what they meant. Second, failed collaboration, coordination, information sharing, and appropriate action – by those who know or have had interaction with the couple – precede most domestic violence homicides.

Third, victims are safest when they are working closely with a victim advocate. Expecting victims, without support to protect themselves and their children and depending only on the assessment of the victim regarding risk fails to give system professionals an accurate picture of the danger. Victims rarely overestimate the danger they are in, but they often underestimate the danger they are in from an abusive partner. Providing every victim with an advocate has a profound impact in increasing victim safety and reducing the risk of homicide.

Fourth, the majority (nearly 75%) of victims of domestic violence die at the time of separation in the relationship or soon thereafter. Professionals should not be pushing victims to leave abusive relationships unless we are doing to provide all the resources they need to stay safe after separation.

Fifth, less women and men die when we have gotten the guns out of the homes of violent and abusive men. It is very clear that the majority of women and men die in domestic violence homicides at the hands of someone with access to a firearm in the home. We need much stronger efforts across America to take the guns away from those who should not legally have them.

Finally, the most dangerous men in the world strangle women in intimate relationships and sexual assaults. If we are going to reduce domestic violence homicides in America, we must focus on non-fatal and near-fatal strangulation assaults. If a woman is strangled by her partner, even once, she is 800% more likely to be killed by that partner. While it is far more likely that he will use a firearm to kill her, the strangulation assault is very often a precursor to a later domestic violence homicide.

Five Lessons Learned

1. Risk assessments and lethality assessments must be done in every part of the system once violent and abusive offenders are identified. Risk assessment training should be considered mandatory for all professionals that come into contact with victims and/or perpetrators of domestic violence and should be repeated annually so that professionals will be informed about the guiding principles of risk assessment. This training should focus on judges, court clerks, police officers, prosecutors, advocates, medical service providers, mental health professionals, faith community members, child welfare professionals, and even family members and friends of the victim and the offender.

The majority of domestic violence homicide victims have contact with law enforcement, criminal justice, and civil justice system agencies before they die. Many have contact with medical professionals and faith community members. Far fewer have contact with community-based domestic violence or sexual assault agencies before they die. Very few homicide victims ever receive help from a coordinated, multi-agency team of professionals before they die. We therefore must focus our lethality assessment training and actual assessments in those systems that have the most contact with victims before they die.

Family, criminal, and juvenile court professionals should be engaged in recognizing the dangers to domestic violence victims and their children. If the court system is not actually conducting such risk assessments, it should be partnered with community-based professionals that are conducting such assessments with both victims and perpetrators. Issues need to be addressed such as the increase level of risk during a separation/divorce; the dangers to children from a high-risk offender during visitation; and best practices for creating safe parenting practices. There needs to be enhanced communication between family courts and criminal courts. Family courts should have mandatory screening for family law matters that include screening potential high-risk offenders.

2. Multi-agency, collaborative approaches such as Family Justice Centers, High Risk Teams, Multi-Agency Models, and Multi-Disciplinary Teams must be developed to provide support and trauma-informed intervention with victims and their children. Strong research is emerging that more victims get the help they need when the services are accessible, culturally relevant, and trauma-informed. It is also clear that the evidence against abusers gets stronger when agencies are collaborating and sharing information. Coordinated community response (CCR) approaches clearly reduce homicides, increase victim safety, and enhance offender accountability but CCR approaches must be constantly evolving, prioritized, and supported by local agencies. Over time, any time of

collaboration tends to lose energy, engagement, and focus in rural, suburban, metropolitan, or tribal communities. Dynamic, sustained, high-risk teams in local communities, acting on the information from risk assessment processes, clearly play a strong role in reducing homicides.

3. Child welfare, domestic violence, and sexual assault professionals should be working together in multi-disciplinary, multi-agency, and coordinated community response approaches. We cannot continue to have each separate discipline develop its own intervention and prevention models. Given the high rate of co-occurrence of child abuse and domestic violence (and related sexual assault), we must continue to advocate for coordinated approaches. Child Advocacy Centers and Family Justice Centers should be moving toward greater collaboration and coordination with each other and should be co-located whenever possible.

4. Addressing domestic violence in the workplace must be a priority in every community. All employers should be encouraged to develop policies on measures they can take in their workplace to prevent and provide an effective response to workplace domestic violence and harassment. Training should be provided for all employees on how to recognize warning signs of domestic violence and how to respond appropriately when they see the warning signs or witness incidents. Managers and supervisors should receive additional training so that they can appropriately assist victims or co-workers of victims who report concerns.

5. True homicide prevention begins in work with trauma-exposed children growing up with domestic violence and related child abuse. In America, we raise our criminals at home and the vast majority of all domestic violence homicide perpetrators grew up in home with some mix of child abuse, domestic violence, and/or drug and alcohol abuse. If the criminal, juvenile, and family courts of America want to truly reduce domestic violence homicides in this country, they will invest far more effort in ensuring that trauma-exposed children get the support and services they need to mitigate the impacts of the trauma they have suffered.

EDWARD
NORTON**The New York Times** | <http://nyti.ms/1kZ1uS4>

SUNDAYREVIEW | OPINION

Two-Parent Households Can Be Lethal

Domestic Violence and Two-Parent Households

By SARA SHOENER JUNE 21, 2014

AFTER spending two years studying services for domestic violence survivors, I was surprised to realize that one of the most common barriers to women's safety was something I had never considered before: the high value our culture places on two-parent families.

I began my research in 2011, the year the Centers for Disease Control and Prevention reported that more than one-third of American women are assaulted by an intimate partner during their lives. I talked to women in communities that ranged from a small rural mining town to a large global city, in police stations, criminal courts, emergency shelters, job placement centers and custody proceedings. I found that almost all of the women with children I interviewed had maintained contact with their abusers. Why?

Many had internalized a public narrative that equated marriage with success. Women experiencing domestic abuse are told by our culture that being a good mother means marrying the father of her children and supporting a relationship between them. According to a 2010 Pew report, 69 percent of Americans say single mothers without male partners to help raise their children are bad for society, and 61 percent agree that a child needs a mother and a father to grow up happily.

The awareness of the stigma of single motherhood became apparent to me when I met a young woman who was seven months pregnant. She had recently left her abusive boyfriend and was living in a domestic violence

shelter. When I asked if she thought the relationship was over, she responded, “As far as being together right now, I don’t want to be together. But I do hope that in the future — because my mind puts it out there like, O.K., I don’t want to be a statistic.” When she said this, I assumed she was referring to domestic violence statistics. But she continued: “I don’t want to be this young pregnant mom who they say never lasts with the baby’s father. I don’t want to be like that.”

Shame about not meeting certain standards of motherhood was prevalent in upper-middle-class families, too. Women with professional and social prominence often feared tarnishing the veneer of their perfect-looking lives. Others were afraid of being judged for putting their children at risk by choosing a dangerous partner. One explained that she kept her abuse a secret because “I was embarrassed by the things I was seeing; I couldn’t let people know that he wasn’t the husband and provider we pretended he was.” Regardless of who they were, most survivors were acutely aware of how their victimization would influence their public identities as mothers.

The truly alarming part, however, is the extent to which the institutions that are intended to assist domestic violence survivors — protection order courts, mental health services, public benefits programs and child custody systems — reinforce this stigma with both official policies and ingrained prejudices.

Mental health professionals, law enforcement officials, judges and members of the clergy often showed greater concern for the maintenance of a two-parent family than for the safety of the mother and her children. Women who left abusive men were frequently perceived at best as mothers who had not successfully kept their children out of harm’s way and at worst as liars who were alienating children from their fathers.

In court, I watched a judge order the very first woman I interviewed to drop off her son at his father’s house every week for visitation. When she tried to tell the judge that she had a protection order against her child’s father and that she was concerned for her safety, the judge responded: “You know what? You are just trying to keep this child from his father, aren’t

you?”

I saw women lose custody rights because they had moved with their children to friends' houses or even into domestic violence shelters to escape abuse, and judges considered these “unsuitable living arrangements.” The children were sent back to their abusive fathers, who could provide “more stability.”

Another survivor I spoke with was tangled in a custody battle with her former boyfriend, who was also being prosecuted in criminal court for injuring their children. One afternoon, we sat outside the town's courthouse. She had just lost two additional days a week of custody to the children's father. The primary evidence against her was a picture of her drinking a cocktail, illustrating her apparent unsuitability as a mother. She said: “I tried to get my kids out before things got really bad, and the court was like, ‘Where are the bruises? It's not so bad. Why are you alienating the kids from Dad?’ Next time they said, ‘Why didn't you get out? Why didn't you protect the kids?’ They want you to get away from the abuse and then they make it so hard.”

The very system meant to punish perpetrators and protect survivors of violence bound the two more tightly together. This reality deeply affected women's choices; many calculated that they would rather live in abusive homes with their children than risk leaving them alone.

Since returning from my fieldwork, I have been struck by the pervasive narrative across the ideological spectrum regarding the value of two-parent families. To be sure, children who enjoy the support of two adults fare better on average than those who do not, and parents with loving partners often benefit from greater emotional and economic security. However, I have seen the ways in which prioritizing two-parent families tethers victims of violence to their assailants, sacrifices safety in the name of parental rights and helps batterers maintain control. Sweeping rhetoric about the value of marriage and father involvement is not just incomplete. For victims of domestic violence, it's dangerous.

Sara Shoener is a public health researcher who graduated with a doctorate from Columbia

University this month.

A version of this op-ed appears in print on June 22, 2014, on page SR3 of the New York edition with the headline: Two-Parent Households Can Be Lethal.

© 2014 The New York Times Company

The Trials, Tribulations, and Rewards of Being the First

American Bar Association, Spring 2014, Judges' Journal, Vol. 53 No. 2

John M. Leventhal, Daniel D. Angiolillo, Matthew J. D'Emic

John M. Leventhal is an associate justice of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department. As a trial judge, he presided over New York State's first domestic violence part and the nation's first felony domestic violence part from June 1996 until January 2008.

Daniel D. Angiolillo is a retired associate justice of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, and former member of the court's constitutional bench.

Matthew J. D'Emic has been the presiding judge of the Brooklyn Domestic Violence Court since 1998 and the presiding judge of the Brooklyn Mental Health Court since 2002. He is chair of the ABA Alternatives to Incarceration and Diversion Committee and an adjunct professor at Brooklyn Law School.

PART I: The First Felony Domestic Violence Court

The Brooklyn Domestic Violence Court's list of accomplishments is long. This pilot project, which turned into a national model, has had many successes, including the establishment of the Family Justice Center.

What's more, its probationers have one-half the violation rate compared to the general probation population.

By John M. Leventhal

PART II: The First Integrated Domestic Violence Court

The "one family/one judge" concept has simplified the court process for litigants, reduced the number of appearances in multiple courts, and addressed conflicting orders of protection.

By Daniel D. Angiolillo

PART III: The First Mental Health Court

The first mental health court in New York has reaped many rewards while dealing with the intricacies of mental illness and its effect on families and relationships.

By Matthew J. D'Emic

Part I: The First Felony Domestic Violence Court

By John M. Leventhal

I am now an appellate judge hearing civil and criminal appeals from courts in 10 counties, namely Brooklyn, Queens, Staten Island, Nassau, Suffolk, Westchester, Rockland, Putnam, Dutchess, and Orange Counties, comprising nearly half of New York State's population and litigation. Up until January 2008, I had presided for nearly 12 years over the nation's first felony domestic violence court in Brooklyn and the first domestic violence court of any kind in New York.

Prior to this assignment, I had presided over only one domestic violence case, and, as did many of my cases, it involved murder. Boris killed his in-laws with a hunting knife, duct taped his son to a chair, and attempted to rape his estranged wife, culminating in a hostage situation where Boris unsuccessfully tried to orchestrate his "suicide by police." This introduction was an eye opener and scared me to become super vigilant so that this situation would not easily arise with any of the cases that I would come to preside over as a judge in a dedicated domestic violence (DV) part.

It is not an easy task to start a "domestic violence court." In the aftermath of a celebrated New York case and the O.J. Simpson case, not too many judges wanted to sit in a dedicated DV part. Let me tell you why. Galina Komar was killed by her boyfriend in February 1996. As sometimes happens, the boyfriend then committed suicide. The then-governor and mayor of New York called for the impeachment of the judge, who had reduced the bail set on the case for the boyfriend's previous assault of Ms. Komar. Although a judge cannot be impeached for a discretionary bail determination, he was nonetheless universally criticized in the media. He became a magnet for disapproval and the judicial conduct commission called for his removal, not for the bail decision in this case, but for a finding, after hearings, of an anti-prosecutor and anti-woman bias.

In June 1996, just four months after Ms. Komar's murder, I was asked to preside over the "Brooklyn Domestic Court," the first court of this kind in New York and the first felony domestic violence court in the nation. My first trial in the specialized court involved a man who was convicted of attempted murder. He had shot his girlfriend two times in the back of the head while she was asleep. His motive was to prevent her from testifying against him when she refused to drop the pending felony assault charges where he cut her across her upper lip with a jagged tobasco sauce bottle. I wanted to take steps to avoid any violence on my pending cases so incidents like this would not happen.

Trying to Meet the Challenge of Domestic Violence

By tradition, courts are somewhat remote, passive adjudicators. Our role has been to receive a case presented to us, impartially evaluate evidence of past acts, and render judgment. We award damages in civil cases and punishment in criminal cases as the deterrent to future unlawful behavior and then move on to the next case. With more than three million new filings each year in the New York State courts—and growing—we consider it a significant achievement just managing to do that fairly and efficiently. By tradition, courts have not been aggressive problem solvers—that is, courts generally have not taken the lead in reaching out to other institutions to fashion creative solutions for the social-behavioral problems that so often underlie our cases.

Only within the last 20 years have we also come to see that our overflowing dockets include a great deal of repeat business that can perhaps be more effectively handled. Recycling the same human beings, with the same problems, through courts is not good for us, it's not good for the parties, and it's surely not good for society.

With domestic violence cases, for example, we know from experience, as well as from the literature, that the parties are likely to be back in court again and again and that the violence typically escalates in intensity, frequency, and duration. The recidivism rate for crimes of violence against intimate partners is

enormously greater than for crimes committed against strangers. We know that unlike victims of random attacks, battered women often have compelling reasons—such as fear, economic dependence, family pressures, sometimes even affection—to feel ambivalent about cooperating with the legal process. In a system that often depends on a victim’s willingness to cooperate, this ambivalence frequently results in dismissal of court proceedings.

We know that when they go forward, domestic violence cases are more volatile and harder to prosecute. These characteristics raise the risk that traditional case-processing methods will fail to deter abuse. Without substantial coordination or communication between police, prosecutors, the defense bar, victim advocates, probation officers, corrections personnel, and the courts, for starters, the chances are good that some of these problematic cases will slip between the cracks—and that battering will continue, sometimes with tragic outcomes.

Because of these significant differences, it became clear that the courts needed to design a new structure for domestic violence cases. If victims remain in abusive situations due to fear for their own and their children’s well-being, then why not provide access to services and safety planning that may expand the choices available to them? If domestic violence defendants present a particular risk of future violence, then why not enhance monitoring efforts to deter such actions? If cases slip between the cracks of a fragmented criminal justice system, then why not work to improve coordination and consistency? If domestic violence cases do not fit the traditional paradigm of court cases, then why not change the mold?

We did change the mold. There are now 24 dedicated domestic violence courts throughout New York modeled after the Brooklyn DV court and 38 integrated domestic violence courts with at least one in every judicial district serving over 90 percent of the state’s population. These integrated domestic violence courts process not only all aspects of domestic violence cases, but also any matrimonial or family court issue such as custody, visitation, abuse, or neglect. The concept is one family, one judge.

Are we successful? Over a decade, our probationers in the Brooklyn felony domestic violence court had one-half of the violation rate when compared to the general probation population. We had far fewer dismissals than there have been historically when domestic violence crimes had been processed in conventional courts. Our court fulfilled the traditional role of courts in protecting the constitutional and procedural rights of the defendants, but we also worked as a problem-solving court to ensure the safety of the complainants while the cases were pending and even after the cases were adjudicated through monitoring of probationers and parolees who had to return to court by appointment. This was the predecessor of what then–Attorney General Janet Reno had championed and is now termed a “reentry court.” This is where we deviated from a traditional court. We engaged in intensive judicial supervision and monitoring, returning defendants to court in front of the judge every few weeks even though there may be no hearing to be held on motions or no trial. The trial court reinforced to the defendant the concept that the order of protection was the court’s order and the name of the case was the state (not the wife or girlfriend) versus the defendant. This reinforced the message often said or sometimes unstated that the “court was watching.” We developed a partnership or what some call a coordinated community response. We held scheduled meetings with our partnership—police, prosecutors, the defense bar, victim advocates, probation and parole officers, corrections personnel, the family court, drug and alcohol abuse programs, and elder abuse organizations. We offered regular training programs for the defense bar and prosecutors on issues such as immigration and domestic violence, teen dating violence, same sex violence, elder abuse, etc.

When I first started as a “domestic violence” judge, I had very long wish lists that over the years shortened as some of our goals have been realized, including the establishment of the Family Justice

Center. The Family Justice Center brings together all sorts of civil support for battered women such as housing, employment, benefits, immigration, etc., in one site. I am gratified that New York has passed legislation similar to 18 U.S.C. § 3142 and laws in other states where the safety of the complainant in a domestic violence case is an issue, thereby permitting a judge to consider two additional factors in setting conditions of bail: (i) any violation of an order of protection against a family or household member as so defined issued by any court, regardless of whether the order is still in effect, and (ii) the accused's "history of possession of a firearm."

Yet as far as we have come, we have so much farther to go and so much more to do. I envision a system where a judge can have access to the victim's emergency room record at the initial arraignment so that better and more informed bail determinations can be made. We must build more and better shelters where a mother will not face the agonizing choice of leaving her abuser or being separated from her teenage son. We must help develop safety plans for women who want to leave their batterer to empower them and to protect them. When we see a woman who doesn't leave the man who abuses her, we should not judge her; she may be smarter than we think because a woman is 75 percent more at risk of being killed when leaving an abuser than if she had remained.

The rewards in presiding over a dedicated domestic violence part have been many. As a result of this work, I have gained a better understanding of the law involving the right to counsel; confrontation, in particular in the aftermath of *Crawford v. Washington*; evidence in general; double jeopardy (punishment in civil family court violations of order of protections and subsequent criminal prosecutions); and the battered woman syndrome as part of the justification defense. This expanded knowledge has made me a better lawyer and, consequently, I like to think, a better judge. As a presiding justice of domestic violence cases, the "up-close" view I sadly endured of the elder abuse component of domestic violence, stood me in good stead when I was given the added assignment of presiding over guardianship cases where often an elderly person was thought to be mentally incapacitated. When I accepted the assignment to preside over the state's first domestic violence court, little did I know that I would be able to turn (with a lot of help) a pilot project into a national model. This chain of events was probably the most significant factor that influenced the decision of two governors to designate me to serve on one of our state's intermediate appellate courts. In retrospect, I realize that my life goal of helping people, which brought me to law school's door in the first place, was fulfilled by my work in the Brooklyn Domestic Violence Court.

Part II: The First Integrated Domestic Violence Court

By Daniel D. Angiolillo

I remember the day as if it were yesterday—St. Patrick's Day, March 17, 1999, when my law clerk, court clerk, secretary, and I sojourned to Brooklyn, New York, for a field trip to the Kings County Domestic Violence Court, the first domestic violence court in the country, to meet the court's presiding justices, John Leventhal and Matthew D'Emic. I had recently been designated by my administrative judge to preside over New York State's first felony/misdemeanor domestic violence court, and what better place to visit, observe, and learn firsthand the rudiments of operating a domestic violence court than conferring with the judicial pioneers in the area of domestic violence. On that day (in addition to enjoying a St. Patrick's lunch at a spirited local establishment), we had the opportunity to shadow Justice Leventhal, a gracious, caring, compassionate jurist who answered our many questions about the philosophy and purpose of a domestic violence court as well as its operation.

Shortly thereafter, the Westchester County Felony/Misdemeanor Domestic Violence Court had its ceremonial opening and New York Chief Judge Judith Kaye presided. At the official opening, we embraced the overall purpose of the court—to improve the criminal justice system’s response to domestic violence through collaboration of criminal justice and community agencies—and the court’s specific goal—to ensure victim safety and defendant accountability. The chief judge asserted, “this new court will provide victims of domestic violence the special attention and support they so critically need and help to insure an effective response to domestic violence.”

The Westchester County Domestic Violence Court was unique in that both felony and misdemeanor domestic violence cases were prosecuted in one court. The court provided continuous judicial supervision of all domestic violence cases from arraignment through disposition, and post-disposition for offenders sentenced to probation or conditional discharge. The continued oversight of the domestic violence offenders ensured ongoing victim safety and offender accountability to achieve an immediate and comprehensive response to domestic violence. The court collaborated with many agencies, known as partners/stakeholders, including the Department of Probation, batterer’s intervention programs, and victim-oriented organizations. These collaborative efforts along with the efforts of the Westchester County district attorney and the defense bar, including the Westchester County Legal Aid Society, helped make the court a success.

A little over two years later, New York’s first felony/misdemeanor domestic violence court evolved into the state’s first integrated domestic violence court. The planning and implementation of New York’s first integrated domestic violence court took nearly a year. In the fall of 2001, pilot integrated domestic violence courts were opened in Westchester, Rensselaer, and Bronx counties. There was no existing integrated domestic violence court for my staff and I to visit and learn from. We had, however, the assistance of the Center for Court Innovation and the cooperation of the pilot courts in Rensselaer and Bronx counties.

This process took nearly a year because we were changing an institution, the New York State court system. Never before had the court system integrated the trial courts in the state. New York State has a complex trial court system with different courts for family, criminal, and matrimonial cases. With an integrated domestic violence court, the litigants on domestic violence cases no longer appear in two or three different trial courts to address the myriad issues that may arise in the context of domestic violence but rather one court, sometimes referred to as the “one family/one judge” court. No longer do litigants appear in multiple courts before multiple judges to address multiple issues. As the “one judge,” the judge presiding in the integrated domestic violence court, I heard all domestic violence issues involving the “one family.”

The myriad issues that may arise often extend beyond the determination of criminal responsibility. Where the parties have a child or children in common, issues often arise over the custody, visitation, and support of the children, and, in some instances, the preliminary question of paternity. If the parties are married, questions of dissolution of the marriage and equitable distribution of their property may be added to the list of issues that may require judicial resolution.

During the many months of numerous planning and organizational meetings within the court system and with the various partners/stakeholders, we attempted to address the concerns and issues raised by each and every interested party. We were exploring uncharted waters. Therefore, to ensure success it was imperative to have the cooperation and the vested interest of all the partners/stakeholders. Some of the issues raised included, for example, the district attorney’s concern that a criminal case might be “bargained away” in settling a matrimonial case if the two cases were heard together by the court. Some family court practitioners were concerned that the substantive and procedural rules in the Family

Court Act might be overlooked if a family court case were merged with the criminal case. Challenges within the court system included computer databases that were not compatible, many administrative obstacles, and at times provincial thinking rather than mindfulness of the overall objective of integration.

The goals of the integrated domestic violence court are not limited to victim safety and offender accountability, but also include the safety and well-being of the parties' children, the sharing of information between the related cases, and ensuring the most informed decisions and consistent orders of protection.

Ordinarily there was little communication among the judges presiding over related family court, criminal, and matrimonial cases, and rarely would a criminal court judge exchange information with a family court judge about a related domestic violence case and vice versa. As the presiding justice of the integrated domestic violence court, there was no need to contact a family court judge to coordinate an order of protection on a related domestic violence case or share other information because I had both cases in the integrated domestic violence court and all the available pertinent information on the related cases.

From its inception, the benefits of the integrated domestic violence court became strikingly obvious. The "one family/one judge" concept has simplified the court process for litigants, reduced the number of appearances in multiple courts, addressed conflicting orders of protection, and provided an extraordinary amount of information for the court and the attorneys. Examples of the benefits of the court were numerous and occurred on a daily basis. It was an innovative time for the New York State trial courts and especially exciting for me to participate in and witness the benefits of the court and its successes.

Part III: The First Mental Health Court

By Matthew J. D'Emic

Like my co-authors, Justices Angiolillo and Leventhal, I am a judge in a domestic violence court and have been for 15 years. My work in that assignment is not, however, the focus of this article. You see, I came second to the domestic violence court—after Justice Leventhal—and so cannot speak to the gains and ills of "being the first." My contribution to this article is as the first mental health court judge in New York State.

Domestic violence courts fit into the category of problem-solving courts. Their focus, however, is offender accountability and victim safety. Mental health courts, another form of problem-solving courts, have an entirely different focus. They are therapeutic courts seeking to use the authority of the court for the betterment of those appearing before them. Mental health courts, unlike domestic violence courts, are alternatives to incarceration courts. By using principles of therapeutic jurisprudence, they attempt to achieve two separate but interrelated outcomes—improved psychiatric stability for the offenders and improved public safety—by linking offenders with mental health treatment. Mental health courts work with mental health agencies, families, housing providers, and others to help offenders suffering with a mental illness lead productive, crime-free lives in the community.

Despite the differences between these two varieties of problem-solving courts, my experience in handling cases of intimate partner violence provide invaluable training in the intricacies of mental illness and the effect it has on families and relationships. While no diagnosis causes the violence associated with a felony caseload, nonetheless, mental illness can be a factor.

So, in March 2002, while continuing my domestic violence docket, I became the first mental health court judge in New York.

There are about 200 mental health courts in the United States as of this writing, but only a few are felony courts. The Brooklyn court was planned as a nonviolent felony court for adults, but that soon changed. One of the first cases sent to the court involved a man in his early 20s arrested for two street robberies. He began acting bizarrely in jail and was taken to a hospital for mental observation. It turned out he was in the throes of his first psychotic break. I have learned since then that this is not unusual because the onset of mental illness often occurs between the ages of 16 and 24. Although the charges were violent, the district attorney agreed with the defense attorney that mental health treatment was appropriate and evaluations were done. I am fortunate because the Brooklyn court has a treatment team. A social worker on the team performs a psychosocial evaluation while a consulting psychiatrist conducts a psychiatric one. In the case of this young man, the diagnosis was schizophrenia. A treatment plan was formulated and, as is the practice in my court, a conditional plea entered. The defendant agreed to a felony prison sentence if he failed the mandate and a dismissal of the indictment if he succeeded. He did indeed succeed, he graduated from the court, and his case was dismissed. The last I heard, this young man went on to obtain a master's degree and has remained in therapy and on medication. I believe this is one good practical example of the theory behind the court. Public safety was safeguarded by treatment overseen in the mental health court. The alternative would have been a prison term followed by the release to the community of a still-young man with a serious, untreated mental illness. It is also an example of the expansive types of cases the court accepts. After 12 years of operation, 17 percent of its cases are misdemeanors and 44 percent of the caseload involves violent felonies, even though, as mentioned, the court was originally only intended to accept nonviolent felonies.

In keeping to the theme of this article, I would have to describe the young man as both a trial and a reward. As one of my first cases in the mental health court, it was a trial that required a lot of learning. The reward of his graduation with parents present speaks for itself.

As for tribulations, there have been plenty of those. One such case involved a middle-aged pharmacist who was addicted to benzodiazepines and suffering from major depressive disorder. Already twice convicted of driving under the influence, he was referred to the mental health court with another, similar charge. As with the prior case, he was evaluated, a treatment plan developed, and a conditional plea taken. Unfortunately, he could not stop his drug use. Upon his arrest for driving while high on drugs, I determined that public safety was too greatly jeopardized and sentence was imposed. This was not the result anyone wanted, and it was made more difficult by his elderly parents' plea to give him another chance.

Although failure of the defendants and the imposition of sentence are always difficult, it was a foreseeable part of the job. The tribulation I was not prepared for is suicide.

The first of these was a man in his 50s. Mentally ill and in a completely enmeshed dysfunctional relationship with his mother, he wound up assaulting her. Referred to the mental health court and diagnosed with depression, his progress was halting. An extremely emotive person, he cried easily. At almost all of his weekly court appearances, he would sing "It's Too Late to Turn Back Now" to the courtroom. After several months of court-mandated treatment, we learned that he jumped off the roof of his apartment building. Another younger defendant took an overdose of pills, leaving his mother a note that he could no longer live with mental illness. There are others as well. These terrible tragedies are not something most judges experience. They also leave you wondering what you missed or could

have done differently. In the end, however, the only answer is the one Lucille Jackson, the court's project and clinical director, gave me—that mental illness is often a terminal illness.

There are other dilemmas for certain. On a busy day last December, about 80 defendants and their attorneys in various phases of treatment waited their turn. A gentle buzz associated with this sort of human interaction permeated the courtroom—from a distance, innocent and mundane. Hanukkah and Thanksgiving had passed. Christmas and New Year were on the horizon.

When Malachy's case was called, he had a good update. Soon the mood changed. Malachy, 18 and unable to return to his grandparents' home because of an assault charge against him, had been discharged from his homeless shelter. It was a cold New York day and he needed a referral to another shelter. Diagnosed with bipolar disorder and suffering from cerebral palsy, he needed a warm place to stay. Of course, judges and mental health courts are not housing programs and we could not help with this problem. Yet standing before me was a kid who had to spend this day looking for placement in a shelter while other kids were looking at wrapped gifts under a tree. Other kids' eyes reflected Christmas tree lights while his reflected nothing, not even the people in front of him. His eyes were sunken with anxiety. My fear was that he would sink into that darkest cave—depression.

Malachy will stay in the mental health court and hopefully have his criminal charges dismissed. Although there is not much more a criminal court can do for an accused, it is not a very satisfying answer—not at Christmas.

So there are my examples of trials, tribulations, and rewards of a mental health court judge—first one or not. I would like to end my piece of this article on a much brighter note though. Several years ago, I received a letter from a man whom I placed in drug and mental health treatment over his initial reluctance. His case had been dismissed after successful completion of his mandate several years earlier. The note read:

Dear Judge D'Emic,

A few short years ago I stood before you in shackles, a broken man. I had lost all love for myself and those around me. I saw nothing in myself worth salvaging, but you did. You offered me treatment instead of prison but I refused. You, in your mercy and wisdom, sent me back to Riker's Island to reconsider. We went through this for several months. You could have washed your hands of me but you didn't. I relented and went to treatment. For this I owe you my life. I have a home and a family. I am healthy and happy. You, sir, are the definition of humanity.

How's that for a reward?

The authors dedicate this article to the Hon. Judith S. Kaye, former chief judge of the State of New York, who envisioned and established these problem-solving courts under her tenure and displayed the confidence in each of us to preside over them. We would also like to acknowledge the Center for Court Innovation for aiding each of us in setting up the initial protocols for our respective parts and helping us to fulfill our mission of doing justice for the defendants and complainants.

The "Battered Woman's Defense" Its History and Future

By Michael G. Dowd

Twenty years ago I was forced to learn something about battered women in the course of representing a woman who had killed her abusive husband. Prior to that time I had known women were abused but viewed it as a private or personal injustice. I began to learn during the case that the injustice of abuse by an individual man was a symptom of a pervasive denial of human rights on a broad scale that made society itself the accomplice of the man who had beaten my client. Since then I have represented a dozen other women who fought back against their abusers and consulted in fifty to a hundred similar cases across the country. Those twelve years have affirmed and sharpened, but not altered, my initial discovery about the root cause of domestic violence. Essential to the existence of domestic violence is the denial of the equality of women in cultures that perceived this denial as both acceptable and lawful.

This denial of equality was the essential cornerstone of men's violence against women and ultimately operated to deny women a fair trial when they were successful in fighting back against the violence.

From the beginning of time women were seen as inferior to men. Examination of the history of western civilization reveals laws authorizing men's use of violence against women to chastise and control them. In Roman times a husband was permitted to use reasonable physical force, including blackening her eyes or breaking her nose, in disciplining his wife. The English principle of coverture established that a married woman could not own property free from her husband's claim or control. In fact, women themselves were seen as property. English rape laws considered rape a crime against the husband, father or fiancé of the victim. Rape cases were considered properly disposed of if the male "owner" of the victim was compensated for the damage to his "property". Marital rape was inconceivable, as wives could not legally refuse their husbands' conjugal rights. A sixteenth century Russian code wisely cautioned husbands not to strike their wives on the face or ear since they would be sorely disadvantaged should the wife become blind, deaf, or otherwise incapacitated. In many parts of Europe a man could kill his wife without penalty well into the 1600's. By contrast, a wife who killed her husband was penalized as if she had committed treason, because her act of homicide was considered analogous to murdering the king.

English common law sanctioned wife beating under the infamous "rule of thumb," which decreed that a man might use a "rod not thicker than his thumb" with which to chastise his wife. Oddly enough, this restriction was meant to be a means of protecting wives from over-

zealous husbands. American states adopted this rule in the early nineteenth century in formal recognition of a husband's right to beat his wife. By 1910, only 35 out of 46 states had passed reform legislation classifying wife-beating as assault.

These legalized injustices documented a societal state of mind not easily erased after being in place for centuries. It is only in the last fifteen years that most states have made it a crime for a man to rape his wife. Some states require physical injury to accompany the rape. The real legacy of these laws and practices remains in our perceptions of women and their position in respect to men. In many parts of our society a woman's wifely duties include sexual submissiveness.

It is no surprise that a man authorized to abuse his wife would be the king of the castle and the breadwinner. Women were relegated to traditional supporting roles of housewife and mother. A generation ago, national magazines featured stories on the corporate wife and her importance in supporting her husband's career. Careers for women were expected to be in teaching and nursing. It was not long ago that a woman could not be found in the boardroom, a police department or construction site. Few women could aspire to be doctors or lawyers or any occupation that might be overly time consuming and interfere with the duties of being mothers and wives. Also, these professions did not fit the image of a "good woman" who was passive and submissive.

Bound up in these beliefs was the understanding that what happened between a man and a woman behind closed doors was a private family matter. It was behind closed doors that women were regularly abused. Even though government's fundamental obligation to its citizens is its duty to protect them from harm, an exception existed for the husband who would beat his wife. Only recently have police departments begun to vigorously arrest wife beaters, less out of concern for the women than as a result of lawsuits based on an equal protection claim for a failure to protect.

In this reality, battered women knew that they could expect little protection from the men who beat them. Many of them died as a result but some in the face of impending death fought back and killed their abusers. Then they found a system of justice that prosecuted them with a lightening quickness and efficiency never provided to protect them. Not surprisingly the attitudes that permeated a world in which wife beating was accepted had little tolerance for the woman who fought back. On the rare occasions that women were successful in court, their defense was premised on the concept of insanity. Perhaps the best known case was that of Francine Hughes whose story was dramatically portrayed in the television movie "The Burning Bed" televised in 1984.

Although seen as a landmark in recognition of the plight of battered women, Ms. Hughes premised her defense on the ground of temporary insanity. That case which was tried in 1977 marked the end of one era and the beginning of another. Dr. Julie Blackman discussed this

transition in her book Intimate Violence. At the time we were in the midst of a feminist movement aimed at equality for women in all aspects of society. A part of this movement focused on an awareness of the plight of battered women and the basic injustice of their situation. In the mid 1970's the first battered women's shelters were opened in the United States and old ideas about women in the criminal justice system were challenged. The case of Yvonne Wanrow, decided by the Supreme Court of the State of Washington in 1977, was a pivotal advance for women in self-defense cases. Ms. Wanrow had appealed a murder conviction complaining that the trial Court had instructed the jury on the issue of self-defense using only the masculine gender to explain the circumstances justifying the use of force in self-defense. She and her lawyers believed that using the masculine gender implicitly advised the jury to use a male standard in assessing the propriety of a woman's conduct. It seems hard to believe that a major advance encompassed the right of a woman to have "her" and "she" substituted for "he" and "him" when a jury considered the circumstances in which she used force to defend herself. But, that is exactly what happened.

Progressing beyond the reasonable male standard for self-defense the debate continues today about what standard to apply. Some suggest a sex-neutral standard taking into account all of the circumstances surrounding the participants at the time of the incident, including individual characteristics and histories of the parties. Both lay and expert testimony would be used to explain the individual's violence and to dispel misperceptions about intimate violence. Critics suggest this standard reinforces sexual stereotypes by focusing on the defendant as an individual woman but calling it sex-neutral.

A second alternative advanced is the "reasonable woman standard." Advocates argue a woman's perceptions of danger, harm and force are different from a man's and therefore her reactions when threatened by her husband are significantly different from those of a man in similar circumstances. Accordingly her actions should be judged by a different standard. Detractors of this standard see stereotypes emerging similar to those feared with the use of the sex-neutral standard, that is ...

A third approach is the creation of entirely new concept of self-defense based on a reasonable battered woman. A major problem with this position is that it may be unconstitutional under an equal protection argument and again may substitute one stereotype for another. My own experience suggests women have gotten the fairest trial in situations where the sex-neutral standard was used.

Changing the beliefs of a society has been much harder than changing the gender of pronouns used to instruct a jury. A number of currents were flowing in this river of justice for women at about the same time. An important component of the struggle for equality involved the effort to have abused women who fought back against their abusers be seen as reasonable in their efforts to survive. No longer would women go into court and defend themselves in clear cases of self-defense by arguing that they were deranged at the time.

This was not an easy task. The American vision of self-defense had always been cast in the picture of two gunfighters squaring off on a western street. In such a scenario a woman reasonable or not would always be dead. Violence and its use had always been seen as appropriate in male terms. A good man was ambitious, aggressive and in control. A good woman on the other hand was demure, passive and submissive running contrary to the vision of her in a situation where the use of force was ever a good thing. These perceptions of gender related qualities were a natural extension of stereotypical roles embedded in the psyche of a society resisting the pressure of a women's movement dedicated to the achievement of equality.

Lenore Walker, a psychologist, provided a vehicle to assist women in explaining their experiences in the context of a criminal trial where the woman's use of force in self-defense was an issue. In her book, The Battered Woman, published in 1979, she outlined a theory based on research with battered women relating to the structure of a battering relationship from a prospective of understanding the woman's position. She offered the "battered woman's syndrome" to explain why a woman stayed. She described as well the characteristics of these relationships. She suggested that battering relationships had a cycle of violence consisting of three phases and that women in these relationships often suffered from learned helplessness.

Dr. Walker's landmark work described a series of myths associated with battered women and the characteristics of the women themselves. The myths included beliefs that battering was not widespread, it didn't happen to middle class white women, that the women were masochists, they could leave at any time and battered women deserved to get beaten. The women themselves were said to suffer from low self-esteem, have traditional values about relationships, to accept responsibility for the abuse, and believe they were isolated, among other things. The three phases of the repeated cycle of violence consisted of the tension building phase, the acute battering incident and the contrition phase where the batterer showered affection on the women with promises never to repeat the conduct. Later anecdotal information suggests that the contrition phase may disappear over a long period of time replaced by a periods better described as a lull in hostilities. At this time the apologies and remorse that helped keep the woman in the relationship are replaced by fear of leaving.

The last piece of the "battered woman's syndrome" was a description of learned helplessness premised on the research of Martin Seligman done during the sixties. Seligman had reported that dogs placed in cages with a divider would jump from one side to the other when the side the dog was on was charged with electricity. Then, the side the dog jumped to was also charged and a shock was administered causing the dog to jump back to the side of the cage he had come from. Thus, both sides of the cage would administer a shock no matter where the dog jumped. There was nowhere the dog could go without receiving a shock. In a short while the dog would no longer attempt to jump because it had learned there was nothing it could do to avoid the pain. The dog would simply lie there. The animal had learned that it was helpless and refused to try to avoid the shock. This principle was applied to battered women in abusive relationships. Repeated beatings like electric shocks seem inescapable. Women, at first, believe

they can control the violence by their behavior. Doing what the abuser wants or refraining from conduct that precipitates the violence over time doesn't work. These women come to believe that nothing they do can alter the violence. They become passive and the ability to perceive alternatives disappears. Battered Woman's Syndrome became a way to explain the conduct of a woman in a battering relationship who had fought back and killed her abuser. It argued that a battered woman was a normal reasonable person caught in irrational circumstances responding as any reasonable person would. For a lawyer handling a woman's self-defense case it provided the tools to argue what happened to this woman would happen to anybody under similar circumstances. "Battered Woman's Syndrome" made the battered woman every woman and therefore a reasonable person who used force in self-defense. An apparent contradiction lay in the use of force by someone who suffered from learned helplessness. This was explained as a instinctual response to a survival situation where the threatened violence by the abuser exceeded prior violence levels and was observed by a person acutely aware of changes in the level of violence. This evidence was predicated on scientific theory and could be offered to the jury or judge through the testimony of an expert in the area of "Battered Woman's Syndrome".

The confluence of currents in the social stream of the 70's provided a movement dedicated to equality for women and a body of research that could explain the experiences of battered women within the concept of reasonableness. Such was the birth of what has become known as the "Battered Woman's Defense". This defense is really nothing more than a woman's use of self-defense in the context of her experience as a battered woman.

Its advent on the legal scene came at a time when a generation of men were threatened with impotence at the thought of a woman having the right to choose a superior position during sexual intercourse. Women were challenging their place in an existing societal order. No less traumatic was the understanding that a normal woman could be trapped in an abusive relationship that escalated to a point where the right thing to do was use violence in aid of her survival. This concept presented images that collided like two speeding trains racing toward each other on the same track. Battered woman's self-defense, seemed to be a semantic and social oxymoron.

The same beliefs about sexual stereotypes and prejudices that justified the historical victimization of women denied them their right to defend themselves from it. It is the feminist's catch 22. The vision of a woman as a victim suggested passivity and helplessness devoid of any power or blemish. God help the woman using self-defense who couldn't measure up to image of a helpless heroine with a spotless character. In a world that had been filled with Hollywood scenes of a woman capitulating to love in the overpowering embrace of the hero who knew better than the heroine what she wanted, the acceptance of woman's control of her destiny was frightening. Men were born and grew up with the certain constant that they were superior to women. Women in society were the nurturer's, the care-givers not the movers or shakers. It was the way things were meant to be; it was right. Many women grew up being taught--and

accepted-- the same beliefs. A woman's violence against a particular man in self-defense was seen as a threat to every man and the existing social order.

I remember growing up going to Catholic school and hearing the saying that if the nuns had you until you were ten they had their hand on your shoulder the rest of your life. It was a way of explaining the power of beliefs drilled into you as a child. No less powerful were the repeated messages about the status of men and women. The roles of women and men and the inherent superiority of men permeated every facet of our being from religion to the media to observations of everyday life, not as something bad but as a statement of the natural order which was both right and wholesome. The mountain of prejudice we now call sexism built over all of history would not be eroded in a short time.

Before a battered woman could fight the battle for the hearts and minds of a jury she needed an advocate to present her story. Like a screenplay that needs a good director and the backing of a producer, a battered woman's self-defense case needed the vision of a lawyer to structure the case and a judge willing to let it be presented to the jury. An attorney or judge encumbered by prejudices about battered women would be an unlikely candidate to advance a defense that contradicted fundamental opinions about the existing social order. Even the unbiased might deny the reality of societal prejudice to absolve themselves of any responsibility for the violence these beliefs tolerated. Obviously the denial of such prejudice renders us powerless to correct an injustice that we cannot admit exists. Too little attention has been paid to the cases of women that were never presented in court, not because of a biased or ignorant judge but as the product of inaction or ignorance of the attorney charged with her defense. These injustices surface, if at all, as the woman languishes in jail and becomes aware of what could have been done for her case.

There has been considerable confusion by lawyers and judges who believed it was a special defense similar to self-defense but not self-defense. In many of my cases, prosecutors, defense lawyers and judges would ask me if I was going to use the "battered Woman's Defense". A prosecutor would inform the judge that "Mr. Dowd is going to use the `battered woman's defense". The judge in the position of someone asked to gaze on the emperor's famous new suit of clothes would respond "we will just have to see if he does" convinced he was unaware of something he should have known. They talked like it were collateral estoppel or the statute of frauds. It was sometimes seen as a psychiatric defense somewhere between insanity and heat of passion. Really, the true lies elsewhere. Like the emperors' clothes, there is no "Battered Woman's Defense."

Still, good thinking people were misled. Part of the problem was the use of the word syndrome to describe the abused woman reactions to a violent relationship. "Syndrome" is defined as a group of symptoms that characterize a disease or disorder. I believe it is useful to describe Battered Woman's Syndrome as the responses and characteristics of a normal woman who finds herself in a defective or dysfunctional relationship surrounded by the societal realities of life

confronting a woman today. The major defects are in the relationship, the batterer and the society.

Without considerable knowledge of the subject it is easy to conclude that Battered Woman's Syndrome describes a disorder or disease of the woman resulting from abuse and causing her to remain in a battering relationship. In this construct the woman stays because the abuse impairs a rational decision to leave or she suffers some from pre-existing defect. It is very hard to build a self-defense case grounded in reasonableness when the woman's prior decisions reflect an absence of quality. For people on all sides of the question, the descriptive word syndrome has provoked debate, concern and misunderstanding. Most would prefer it hadn't been used but the confusion resulting from a descriptive name change, at this time, would exacerbate the problem. Feminist concerns focused on the fear that the apparent contradictions inherent in the word syndrome would label battered women as abnormal people. This perception necessarily absolved society of any responsibility and placed the blame on the victim. Judges have ordered psychiatric examinations of women claiming to use expert testimony on Battered Woman's Syndrome in the mistaken belief that a form of insanity defense was imminent. The essence of the error was the search for medical pathology in the disease of an intimate relationship better dealt with by the social sciences than medicine.

This is not to say that battered women may not suffer from some form of mental disorder as a result of the continual violence. Maladies like post-traumatic stress disorder may be present giving rise to an insanity defense or some form of mitigating psychiatric defense such as extreme emotional disturbance. One of the problems in interposing a form of insanity defense involves the potential of having the burden of proof on this issue. Another difficulty can be the prosecution's right to a psychiatric examination of the woman where there is a mitigating or exculpating psychiatric defense.

Some of the responsibility for the confusion must be laid at the door of the defense lawyers in their inaccurate presentation of the expert testimony in aid of the defense of a battered woman. Defense lawyers found themselves with a source of expert testimony that their adversaries and judges seldom understood. Too often they seized on this lack of knowledge as a means of extending the evidence beyond its potential. This resulted in chaotic rulings by trial courts left to be sorted out by appellate courts.

I believe the proper use of "Battered Woman's Syndrome" assists the fact finder to understand the state of mind of the battered woman at the time she fought back against her abuser. It does this by dispelling myths and misperceptions about battered women, explains the woman's inability to escape the battering relationship and provides an understanding of the circumstances creating a reality-based perception requiring the use of reasonable and necessary deadly force in order to defend herself. Such evidence does this in the same way a history of prior violence and abuse bears on the state of mind. The expert explains to the jury the myths and misconceptions about abused women and their batterers and then charts the

characteristics of a battering relationship that identifies Battered Woman's Syndrome such as the cycle of violence and learned helplessness. These concepts have been previously discussed. The expert when discussing learned helplessness can start to explain the numerous real factors facing a battered woman who seeks a way out of the relationship.

The real barriers facing a woman trying to escape a battering relationship contribute to a sense of helplessness and at the same time explain why she doesn't leave. Things like the poor performance of police and the courts in protecting women, the lack of space in battered women's shelters, the likelihood of increased violence when a woman attempts to leave, the financial hardship a woman faces when leaving all make escape difficult and dangerous. These factors together with evidence of the prior violence of the abuser are part of a woman's state of mind which is critical to her defense. The facts contributing to a belief by the woman that she is helpless to control the violence, stop it or successfully flee are not products of defective or delusional thinking. Crucial handicaps for women in self-defense cases have been their apparent use of excessive force in response to a threat or assault and the timeliness of their response to a threat of harm or actual harm. In some cases it is the use of a knife or gun in response to an unarmed attack or the woman's use of force after a threat of death with no assault. Another criticism of the law of self-defense is that it presumes a first-time meeting between the participants.

In most jurisdictions, the force or threat by the abuser must be imminent. The word "imminent" refers to a nonspecific period of time: it can be an immediate threat or something that could happen at any time. The case where the woman shoots a sleeping man or one with his back turned has not appeared to meet the criterion of imminence. In an appropriate case, the testimony of the battered woman about the abuse over a period of time, her belief that she could not escape her abuser in any real way, together with the expert testimony about the reality of these beliefs provides a context that fits a test of imminence, grounded in her experience even if the man's back was turned or she was responding to an unarmed assault. If a hostage, like Terry Anderson, was told he would be killed the next day, we would applaud the strangling of a sleeping guard in an effort to escape. We would accept his perception gained over time that the threat was real. Those circumstances certainly meet any test of imminence and justify the use of whatever force it took to be free.

I have represented women whose lives in homes with abusive men were as dangerous and hopeless as living in a cell in Beirut being guarded by terrorists. These women's knowledge of their captors makes them the best able to assess the threat. Their perception of limited options is not delusional. They may indeed learn to be helpless but this helplessness is produced by the realities of their daily existence and not some distorted by product of violence.

Why can't lawyers, judges and juries equate the experiences of the battered woman with those of the hostage or prisoner? Our daily news is spotted with reports of women murdered clutching orders of protection or fleeing like fugitives from men in relentless pursuit. I have

remarked to many in recent years that a battered woman's self-defense case is harder today to win than it was in the early nineteen eighties. The increase in media attention over the last few years generated an assumption that the problem was fast being solved. Again, the reality is markedly different. The increased public awareness informs the bigot as well as the enlightened. Those in the past that responded to the case of a battered woman with crass prejudice now pretend to accept the premise of battered woman's self-defense and the necessary expert testimony accompanying it, but structure their opposition to the issue in the assertion that the woman in question doesn't fit the mold.

It has given rise to distinctions between "good" and "bad" battered women. The "good" battered woman conforms to age old stereotypes of women as passive, loyal housewives living lives as loyal and loving companions of their abuser. This woman must be without any flaw in her character and must continually appeal to the police and courts for help regardless of its futility. The "bad" battered woman is one who fails to possess any of the virtues of the "good" battered woman. She may have obtained an education and pursued a career. Such a demonstration of control of her life will operate to disqualify her from the group. Infidelity or abuse of drugs is equally dangerous. I represented a woman in 1984, in Queens County, who had shot her abusive husband. During the course of the trial the prosecutor tried to introduce evidence that my client was a sloppy house keeper, didn't toilet-train her children and had an affair. The judge permitted the testimony and instructed the jury this was evidence demonstrating what she had done to provoke her husband to beat her. The prosecutor in that case was a woman. Both judge and prosecutor claimed to be sympathetic to battered women, but my client didn't fit the mold. The frontal assault on the issue of battered women as victims of injustice has been replaced by an individual disqualification from the group.

The new rallying cry of the bigot spawned in the darkness of ignorance is that "we all know and accept the injustices done to women and the need to recognize the right of battered women to fight back against their abusers, but this particular woman was not in such a position". The wolves are indeed in sheep's clothing. It is not very different from the fourteen stalwarts of the United States Senate proclaiming their sensitivity to sexual harassment during the Clarence Thomas confirmation hearings. The sensitive Senators abhorred sexual harassment in general; they just couldn't find any when they looked for it.

The struggle today for acceptance of the right of a battered woman to defend herself against her abuser and then receive a fair hearing in the system that prosecutes her has shifted from a fight to get in the door to a battle over a particular woman's presence as an appropriate resident. The rationale for the exclusion has remained the same while the arguments have changed. The perceived need to camouflage the prejudice makes it all the more difficult to detect.

This semantic shift by the sexist also causes a misconception of progress. In its simplest form, the reduction of openly sexist positions and increased media attention obscure the continuing

magnitude of the problem. These two factors are by no means operating in concert. The media's prolonged examination of domestic violence is either a reflection of heightened awareness or a precursor of public arousal depending on one's view of the press. Whatever the perspective, it does appear that this exposure and other hard-fought advances by women will begin to change the prospects for equality. Here, once again, a fundamental premise of this essay resurfaces. The long held beliefs in the inequality of women remain strong and resistant to change. The ripple of progress made for battered women in the courtroom with a defense tailored to reflect the experiences of the women still has not eroded internal societal prejudices. In the late seventies and early eighties the prejudices would be expressed in a much more forthright manner making the arguments more direct. Now the job of ferreting out bias and prejudice is much more difficult.

Beyond the pale of prejudice, in the community of decent people, the awful truth of our indifference and inability to quell the tide of violence against women is often too horrific to accept. The reality of life for a battered women is indeed beyond the knowledge of the average person. Expert testimony is needed. The recognition of the truth entails an acceptance of responsibility for the violence among us. Denying the truth of the woman's story can be easier than dealing with it.

There does seem to be a "backlash" against the rights of women as described by Susan Faludi in her book by the same name. It has been a reflected vision in the eyes of battered women who have been left unprotected by a society that refused to protect them. When these women chose life over death the organs of government that had failed to protect them prosecuted them with a vigor and speed reserved for serial murderers. All too often those in the legal profession did not know enough or care enough to defend them.

The heart and soul of the battered women's movement was and is the people who established the shelters for women in abusive relationships. They remain undaunted in their pursuit of equality and an end to the violence. For all they have been able to do in providing a safe haven, there remains a serious gap in the services battered women need when seeking to escape a battering relationship or having survived after fighting back against their abusers. The lack of adequate representation of battered women in the courts is at crisis levels. Solving this problem is a fundamental goal of the newly established Pace University Woman's Justice Center. This institution, formed in October 1991, was a partnership between the State of New York and Pace University. In the last few years, the Center functions as a part of Pace University. This Center has trained lawyers to represent battered women in criminal and civil cases. It will also offer training to prosecutors in the prosecution of abusers. For the battered women in jail, those the system has already failed, the Center is working to provide them assistance in the preparation of petitions for clemency. It was the first Center at a major university in collaboration with government dedicated to the eradication of a problem with us since the dawn of history.

Already men and women are coming forward to take the training but also volunteering to work at the Center toward the goals of equality and an end to the violence. All ages are represented but most of the volunteers are represented by the generation growing up in the wake of the decade of self-gratification represented by the eighties. These young people have watched a generation beset by greed and materiality flounder in the emptiness of the experience. They are dedicated to filling their lives with the richness of work that will benefit others. For them it is enough to try. Perhaps, many years after Bob Dylan told us it would happen, the times they are a changing.

- See more at: <http://corporate.findlaw.com/litigation-disputes/the-battered-woman-s-defense-its-history-and-future.html#sthash.ZpKsywV5.dpuf>

Domestic Violence, Orders of Protection and Firearms Your Chance to Make a Difference

The New England Journal of Medicine reported in 1996 that where a gun resided in a home where previous Domestic Violence Assault occurred; it increased the risk that a Domestic Violence incident would result in a homicide twenty fold.

- The Congressional record as reflected by statement of one of the Senators sponsoring 18 USC §922 (the Orders of Protection and Gun Act) indicated that the presence of a gun dramatically increased the likelihood that a Domestic Violence incident would escalate into murder.
- Nearly 1/3 of all women murdered in the United States are killed by a current or former intimate partner. In 2/3 of those cases, guns were a key factor. US Department of Justice.
- In 1998, intimate partners shot and killed 808 American women.
- Homicide is the leading cause of death of pregnant women in the United States. (Chang, Berg & Herndon, 2005)

It is no secret that batterers pose a lethal threat, not only to the victims or complainants in a Domestic Violence case but to the universe that surrounds that victim. It is rare that a victim is alone in their plight, dealing with any particular defendant. Often times we will read that a defendant has perpetrated violence, not only against the victim but the victim's family who may have sought to shelter her and protect her, against the victim's children who might be present in the home, against a victim's companion animal and against law enforcement officers who might respond to the scene of a Domestic Violence incident.

In New York State police officers were injured responding to Domestic Violence calls more than all other calls combined. A police officer is more likely to be killed in a Domestic Violence incident than any other type of crime or call. Removing the guns from the household is not only the best way to protect the victim, but ensures a certain level of safety for the universe that surrounds the victim and the community at large. It has become all too common an occurrence to pick up the news paper and read that not only has a defendant committed murder involving their intimate partner, but the children, the family, the neighbors, or other people have been wounded or killed in that incident and the perpetrator may have then turned the gun on himself. The Court's in New York State, particularly the Town and Village Courts, have a unique opportunity to intervene and secure a certain level of safety while the cases are being appropriately handled. Each Judge has a unique opportunity to increase the safety in their community by ensuring that the laws involving firearms surrender, based on a state and federal law, are adhered to strictly. Court Clerk's may be instrumental in ensuring that the court issues the proper directive in a protection order by alerting their respective judges that firearms are in the household and reminding the court of its responsibility in regard to the surrender of the defendant's license, the ability to possess a license, and the actual firearms, should there be a temporary Order of Protection in a pending case where certain circumstances exist.

This article is designed to lay out those circumstances and acquaint the court clerks and the court itself with their duties in regard to mandatory and permissive seizure of the firearms held by

someone charged with a Domestic Violence case in which an Order of Protection has been issued. The New York State case law falls under CPL 530.14 and CPL §530.12 for Family Offenses and CPL §530.13 for Non Family Offenses. The Federal Statute, referred to is 18 USC 922, and the amendment to that section making it unlawful for anyone to possess firearms that has been convicted of a Domestic Violence misdemeanor is referred to as the Lautenberg Amendment.¹

STATE LAW: CPL § 530.14

I. TEMPORARY ORDERS OF PROTECTION

Mandatory Provision

A. Where a temporary order of protection is issued under CPL § 530.12(1) or § 530.13(1)

and the Court has “good cause to believe” that the defendant:

a) has a prior conviction for a violent felony offense (PL § 70.02)

b) has previously disobeyed a prior order of protection and such has involved:

1) infliction of physical injury

2) the use or threatened use of a deadly weapon or dangerous instrument
PL § 10.00(12) or (13)

3) engaged in behavior constituting any violent felony (PL § 70.02)

c) been previously convicted of Stalking ¹ (PL § 120.60), ²
(PL § 120.55), ³ (PL § 120.50) or ⁴ (PL § 120.45)

The court must:

a) suspend any existing license to possess firearms

b) order the defendant ineligible for such license

c) order the immediate surrender of any and all firearms

The suspension order remains in effect for the duration of the temporary or final order of protection (unless modified or vacated by court).

The order to surrender firearms should be part of the temporary or final order of protection.

¹ Page reprinted from The Docket, NYS Association of Magistrates Court Clerks Inc., Sept 2009, Judge Lehmann

Surrender order must contain:

- 1) where such firearms shall be surrendered
- 2) the date and time by which surrender must be complete
- 3) description of firearms (to the extent possible)
- 4) a direction to the police to notify the court of surrender

Permissive Provision

The court, in its discretion, may

- a) suspend the defendant's existing license
- b) order the defendant ineligible for a license
- c) order the immediate surrender of any and all firearms, owned or possessed

if a temporary order of protection has been issued and the court finds that the defendant:

- a) may use
- b) or threaten to use a firearm unlawfully against the victim or witness

In both mandatory and permissive suspension and surrender the defendant is entitled to a hearing regarding the suspension of license or surrender of firearms. (Must be "commenced" within 14 days of date of order.)

II. FINAL ORDER OF PROTECTION

A. Mandatory Revocation-C.P.L. §530.14 (2)(a)

Whenever the court issues an order of protection upon conviction of a defendant the court must revoke the defendant's existing license where such action is required by Penal Law §400.00. Revocation is required where the conviction is for:

- a felony, or
- a serious offense (as defined in PL §265.00 (17))

B. Permissive Revocation or Suspension - C.P.L. §530.14(2)(b) & F.C.A. §842- a(2)(b)

Where the court finds that there is a substantial risk that the defendant/respondent may use or threaten to use a firearm unlawfully against the person or persons for whose

protection the order of protection is issued, the court may:

- revoke any existing license, or
- suspend or continue to suspend any existing license.

In addition to any order of revocation or suspension the defendant/respondent is also ordered ineligible for such a license and is ordered to immediately surrender any or all firearms owned or possessed.

The court is responsible to notify police authorities, of the locality, of the above action taken and immediately notify the state registry and NY State Police in Albany.

Family Court Act §842a mirrors CPL §530.14 so when Town and Village Courts sit as Acting Family Courts (when Family Court is not in session) you should include the mandatory or permissive firearms provisions for Temporary Orders of Protection as applicable.

Having been raised in the County of Broome, I am keenly aware of citizen's sensitivity to surrendering firearms. Broome County is a county that has numerous firearms. It might be fair to say that most households possess at least one long gun, sometimes numerous long guns. Hunting and sport target practicing are notable past times in Broome County. One of the local high schools, i.e. Harpursville, actually closes on the opening day of hunting season so that the students may hunt with their parents on the first day of the season. Therefore this is a community which cherishes its second amendment right to possess firearms. Such background is helpful to any court or any clerk that deals with a defendant who is directed to surrender their firearms. While many courts are reluctant to deal with the issue because of its volatility and emotion, it would be fair to say that in twelve years on the bench I have rarely had a defendant refuse to surrender their firearms when directed to do so. It is often helpful to explain to the defendant that the law requires the surrender and that you are duty bound to follow the law. Another consideration that the court can articulate is that while we are trying to sort through the case at bar it is the court's main consideration that no one gets hurt. I often articulate that that is not just for the victim, and the victim's family, but for police officers and in fact for the defendant's safety that surrender of the firearms is necessary.

In remembering our duties to seize the firearms and to make the defendant ineligible to possess a permit, I am reminded of the case of the convicted sniper John Allen Muhammed whose ex-wife did have a qualifying Order of Protection against him which disqualified him from purchasing firearms. He had a long documented history of Domestic Violence against other women as well. After the court issued its protective order against him, the defendant still continued to purchase firearms including the long gun which was used to commit a string of 21 shootings in six different states in and around the Washington, DC area. He was eventually arrested with a co-defendant in the process of another shooting using a van that had been modified for the purposes of picking off various victim targets. I'm sure you will remember that this case terrorized the residents in the DC area. Many of us remember television reports showing people afraid to pump gasoline for fear of being picked off by a snipers bullet. Mr. Muhammed's ex-wife has been quoted as saying in the Washington Post that all of the notes that were left by the snipers and the specific shooting sites were messages designed to intimidate her, surrounding and encircling her home and children and closing in on her as a target. Mr. Muhammed was initially arrested and charged with a violation of 18 USC 922 in regards to possession of a firearm.

Never doubt that your diligent efforts in regards to securing the permit, and the physical firearms themselves, are a worthwhile effort. This is especially true in cases of Domestic Violence where the likelihood of violence can be repeated, and that when the violence is repeated, it is likely to be worse. How often can one say, in doing their duties, they may have saved a life, this is one such instance.

Honorable Mary Anne Lehmann
Binghamton City Court Judge

**SAVING LIVES:
DOMESTIC VIOLENCE CASES,
ORDERS OF PROTECTION,
AND FIREARMS**

Hon. Mary Anne Lehmann
Binghamton City Court Judge
Acting Broome County Court Judge (Ret.)
2003, revised 2009 & 2014

The New England Journal of Medicine reported that where a gun resided in a home where a previous Domestic Violence Assault occurred; it increased the risk that a Domestic Violence incident would result in a homicide twenty fold. (JAMA-1996)

- The Congressional record as reflected by statement of one of the Senators sponsoring 18 UCS § 922 (the Orders of Protection and Gun Act) indicated that the presence of a gun dramatically increased the likelihood that a Domestic Violence incident would escalate into murder.
- Nearly 1/3 of all women murdered in the United States are killed by a current or former intimate partner. In 2/3 of those cases, guns were a key factor. (US Department of Justice)
- One woman is beaten by her husband or partner every 15 seconds in the US (FBI). One in four women (25%) will experience Domestic Violence in her lifetime. (Nat Institute of Justice & CDC)
- Homicide is the leading cause of death of pregnant women in the United States. (Chang, Berg & Herndon, 2005)

It is no secret that batterers pose a lethal threat, not only to the victims in a Domestic Violence case but to the universe that surrounds that victim. It is rare that a victim is alone in their plight dealing with any particular defendant. Often times, we will read that a defendant has perpetrated violence, not only against the victim, but the victim's family who may have sought to shelter and protect her, against the victim's children who might be present in the home, against a victim's companion animal, against the victim's neighbor who might report the incident and against law enforcement officers who might respond to the scene of a Domestic Violence incident.

In New York State, police officers were injured responding to Domestic Violence calls more than all other calls combined. A police officer is more likely to be killed in a Domestic Violence incident than any other type of crime or call. Removing the guns from the household is not only the best way to protect the victim, but ensures a certain level of safety for the universe that surrounds the victim and the community at large. It has become all too common an occurrence to pick up the newspaper and read that not only has a defendant committed murder involving their intimate partner, but the children, the family, the neighbors, or other people have been wounded or killed in that incident and the perpetrator may have then turned the gun on himself.

The Courts in New York State, particularly District Courts, City Courts and Town and Village Courts, have a unique opportunity to intervene and secure a certain level of safety while the cases are being appropriately handled. Each Judge has a unique opportunity to increase the safety in their community by ensuring the laws involving firearms surrender, based on a state and federal law, are adhered to strictly. Judges and Court Clerks and practitioners may be instrumental in ensuring that the court issues the proper directive in a protection order, by alerting their respective judges that firearms are in the household, and reminding the court of its responsibility in regard to the surrender of the defendants's license, the ability to possess a license, and the actual firearms, should there be a temporary Order of Protection in a pending case where certain circumstances exist.

This article is designed to lay out those circumstances and acquaint the courts and officers of the court of their duties in regard to mandatory seizure of the firearms held by someone charged with a Domestic Violence case in which an Order of Protection has been issued. The New York State case law falls under CPL § 530.14 and CPL § 53.12 for Family Offenses and CPL § 530.13 for Non Family Offenses. The Federal Statute, referred to is 18 USC 922, and the amendment to that section making it unlawful for anyone to possess firearms that has been convicted of Domestic Violence misdemeanor is referred to as the Lautenberg Amendment.¹

¹Page reprinted from The Docket, NYS Assoc of Magistrates Court Clerks Inc. Sept 2009, Judge Lehmann

Introduction

- I. **Temporary Order of Protection**
 - Mandatory revocation/suspension and surrender
- II. **Final Order of Protection**
 - Mandatory revocation/suspension and surrender
 - Hearing for mandatory suspension and surrender
- III. **Willful Failure to Obey an Order of Protection**
- IV. **Hearing for Mandatory Suspension and Surrender**
- V. **Official Use Exemption**
- VI. **Failure to Surrender Firearms**
- VII. **Disposition of Firearms**
- VIII. **Federal Law**

Tips for Practitioners

Appendix:

- A.) Destruct Order
- B.) VAWA Language
- C.) References

STATE LAW: CPL § 530.14

I. TEMPORARY ORDER OF PROTECTION

Mandatory Revocation

1. Where a temporary order of protection is issued under CPL § 530.12(1) or § 530.13(1)

and the Court has “good cause to believe” that the defendant:

a) has a prior conviction for a violent felony offense (PL § 70.02)

b) has previously disobeyed a prior order of protection and such has involved:

1) infliction of serious physical injury

2) the use or threatened use of a deadly weapon or dangerous instrument
PL § 10.00(12) or (13)

3) engaged in behavior constituting any violent felony (PL § 70.02)

4) been previously convicted of Stalking 1° (PL § 120.60), 2° (PL § 120.55),
3° (PL § 120.50) or 4° (PL § 120.45)

The court must:

a) suspend any existing license to possess firearms

b) order the defendant ineligible for such license

c) order the immediate surrender of any and all firearms

The suspension order remains in effect for the duration of the temporary or final order of protection (unless modified or vacated by court).

The order to surrender firearms should be part of the temporary or final order of protection.

Surrender order must contain:

1) where such firearms shall be surrendered

2) the date and time by which surrender must be complete

3) description of firearms (to the extent possible)

4) a direction to the police to notify the court of surrender

The previously permissive Revocation is now mandatory under the SAFE Act of 2013

1. The court, now must:

a) suspend the defendant's existing license

b) order the defendant ineligible for a license

c) order the immediate surrender of any and all firearms, owned or possessed

If a temporary order of protection has been issued and the court finds that the defendant:

1) may use

2) or threaten to use a firearm unlawfully against the victim or witness

II. FINAL ORDER OF PROTECTION

1. Mandatory Revocation - CPL § 530.14 (2)(a)

Whenever the court issues an order of protection upon conviction of a defendant, the court must revoke the defendant's existing license where such action is required by Penal Law § 400.00. Revocation is required where the conviction is for:

- a felony, or
- serious offense (as defined in PL § 265.00 (17))

2. Again, the previously permissive Revocation or Suspension (CPL § 530.14(2)(b) & FCA § 842-a(2)(b) is now mandatory under SAFE Act 2013 Where the court finds that there is a substantial risk that the defendant/respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection is issued, the court must:

- revoke any existing license, or
- suspend or continue to suspend any existing license
- direct the surrender of any or all firearms owned or possessed

The court is responsible to notify police authorities, of the locality, of the above action taken and immediately notify the state registry and NY State Police in Albany.

In addition to paragraphs 1 and 2 of CPL § 530.14, there is also paragraph 3 (below) which requires mandatory revocation or suspension under circumstances in which there is a *willful*

failure to obey an order of protection.

III. WILLFUL FAILURE TO OBEY AN ORDER OF PROTECTION

1. Mandatory revocation - CPL § 530.14(3)(a) & FCA § 842-a(3)(a) whenever the court finds a defendant/respondent that is subject to an order of protection has willfully violated such order, the court must revoke such firearms license if such willful violation involved:
 - inflicting physical injury as defined in the Penal Law, or
 - the use or threat to use a deadly weapon or dangerous instrument as defined in the Penal Law, or
 - behavior constituting any violent felony offense as defined in Penal Law § 70.02

2. The previously permissive revocation or suspension - CPL § 530.14(3)(b) & FCA § 842-a(3)(b) is again now mandatory under the SAFE Act of 2013.

Where the court finds that there is a substantial risk that the defendant may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection is issued, the court must:

- revoke any existing license, or
- suspend any existing license
- direct the surrender of any or all firearms

IV. HEARING FOR MANDATORY SUSPENSION AND SURRENDER OF FIREARMS

If any Order of Protection has been issued, the defendant is entitled to a hearing regarding the suspension, revocation, ineligibility or surrender order issued by the court. The hearing is commenced 14 days from the date of the defendant's request.

Where a final order of protection is issued, post conviction, revocation of the license or privileges and surrender of any and all firearms is mandatory. The defendant is not entitled to a hearing post conviction.

The court is responsible to notify police authorities, of the locality, of the above action taken and immediately notify the state registry and NY State Police in Albany.

V. OFFICIAL USE EXEMPTION

Where a defendant is employed by an agency that requires carrying a firearm, i.e., police, military, etc., the Court must order the surrender of personal firearms as noted above, but may allow the use of a service revolver while on duty. The service weapon must be issued by the defendant's supervisor on a daily basis and surrendered to the superior officer at the end of the defendant's shift. The defendant must surrender his/her personal firearms.

VI. FAILURE TO SURRENDER FIREARMS

Where a Defendant, subject to an order of protection, fails to surrender firearms as directed, the police or District Attorney may bring a charge against the Defendant for Criminal Contempt in the Second Degree pursuant to Penal Law § 215.50, a Class A Misdemeanor, under subdivision (3), "intentional disobedience or resistance to the lawful process or mandate of the Court".

The police or District Attorney may also apply for and be granted, if sufficient, a search warrant to search the home of the Defendant and seize the firearms. The firearms are in fact evidence of the crime of criminal contempt.

VII. DISPOSITION OF FIREARMS

Any firearms surrendered pursuant to the above shall be kept by the police agency to which it was surrendered in a secure location. Upon dismissal of the case on the merits or an acquittal after trial, the firearms may be returned to the exonerated defendant PL § 400.05 (3). Only a court of record may do so. Upon conviction for a domestic violence crime, the firearms may no longer, under Federal Law, be possessed by the Defendant. Where the weapons were used in the incident resulting in conviction, the weapons are declared a nuisance and destroyed. PL § 400.05 (1) (see order in Appendix).

VIII. FEDERAL LAW

18 USC § 922(g)(8), makes it a federal crime for a person who is subject to a qualifying protection order to possess a firearm or ammunition, or to ship or receive a firearm or ammunition in interstate or foreign commerce. To qualify under § 922(g)(8), a protection order must:

1. have been issued after a hearing, of which the respondent received actual notice, and at which the respondent had an opportunity to participate;
2. restrain the respondent from harassing, stalking, or threatening an intimate partner of the respondent or child of such intimate partner or the respondent, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
3. either include a finding that the respondent represents a credible threat to the physical safety of such intimate partner or child or by its terms explicitly prohibit the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

There is the other federal law that is the companion to the above. This federal statute (below) is triggered upon the conviction of certain domestic violence-related crimes.

18 USC § 922(g)(9) of the Federal Gun Control Act of 1996 prohibits the possession of firearms for persons convicted of a misdemeanor crime of domestic violence.

18 USC § 922(g)(9) provides, in relevant part:

It shall be unlawful for any person who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been thus shipped or transported.

The term “convicted of a misdemeanor crime of domestic violence” means, in part, an offense where -

- A. The person was represented by counsel in the case; or knowingly and intelligently waived the right to counsel in the case; and
- B. In the case of a prosecution for the offense of “misdemeanor crime of domestic violence” for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either
 - 1. The case was, in fact, tried by a jury, or
 - 2. The person knowingly and intelligently waived the right to have the case tried by a jury, by pleading guilty.

A person is not be considered to have been convicted of a misdemeanor crime of domestic violence if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had rights restored (if the law of the applicable jurisdiction provides for the loss of rights under such an offense) unless the pardon, expungement, or restoration of rights expressly provides that the person may not possess, transport, ship, or receive firearms.

- 1. The question is: *Does this include a certificate of relief from disabilities?*

There is no provision for an “official use exemption” as it relates to circumstances involving a conviction of a misdemeanor crime of domestic violence. Accordingly, law enforcement or military personnel are not exempt from the statute’s reach where a domestic violence conviction has occurred.

The difficult question arises when the practitioner, representing the defendant, knows that the firearms provisions have been triggered, yet the court does not utilize the necessary language or direct the surrender of the firearms and/or license. Most clients do not wish to give up their firearms, but will do so if the court directs them. The practitioner must prepare the client for the eventual surrender. The best way to do that is to share the information in this outline with them. If the defendant continues to possess firearms or ammunition while a qualifying order of protection is in place, they could be charged with a federal offense. The attorney should place on the record, as the order of protection is being served in court, that they have advised their client to surrender the firearms and permit (for a handgun) to the local law enforcement agency. If the court balks, ask to approach the bench and explain the law to the court. If the client is ordered to surrender firearms, follow up, and make sure the client does that.

While many courts are reluctant to deal with the issue because of its volatility and emotion, it would be fair to say that, in 18 years on the bench, I have rarely had a defendant refuse to surrender their firearms when directed to do so. It is often helpful to explain to the defendant that

the law requires the surrender and that you are duty bound to follow the law. Another consideration is that no one gets hurt. I often articulate that this is not just for the victim, and the victim's family, but for police officers and, in fact, for the defendant's safety that surrender of the firearms is necessary.

There are very few times when a court order can literally save lives. This is one of those times. Domestic Violence often escalates and where firearms are involved, this could be fatal. Following these rules may make the difference between life and death for all involved.

APPENDIX

At a Term of the City Court of Binghamton held in the City Hall, Fifth Floor in the City of Binghamton, Broome County, New York, on the ____ day of _____, 20__.

PRESENT: HON. MARY ANNE LEHMANN
City Court Judge of Binghamton

STATE OF NEW YORK :: COUNTY OF BROOME
CITY COURT :: CITY OF BINGHAMTON

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

D E S T R U C T
O R D E R
Penal Law § 400.05

Defendant Docket No.

An application having been made sua sponte by the court for an Order directing the destruction of evidence against the defendant who has been charged and convicted of _____, in violation of § _____ of the Penal Law, a Misdemeanor, and the defendant having exhausted his appeal rights, the court is satisfied that there is reason to believe that the case against the defendant is closed and has been so since ____ (date) ____ and directs that the evidence, _____ (describe firearm) _____ declared a nuisance and destroyed, pursuant to §400.05 of the Penal Law of the State of New York.

It is so ordered.

ENTER: Dated, _____

HON. MARY ANNE LEHMANN
CITY COURT JUDGE of BINGHAMTON

VAWA COMPLIANCE
In addition to the federal law....

The VAWA 2005 notification provision also requires courts to provide notification about state and local laws limiting firearm possession, transfer, ownership, or purchase in domestic violence cases.

**WHAT ARE THE MAGIC WORDS IN CRIMINAL CASES
TO SATISFY FEDERAL LAW?**

“If you are convicted of a misdemeanor crime involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition, pursuant to federal law under 18 U.S.C. 922(g)(9) and/or New York law.”

“If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.”

Created by the National Center on Full Faith and Credit.

REFERENCES

NYS CPL § 530.12 & 530.13 & 530.14

FCA § 842

Federal 18 USC § 922

U.S. v. Emerson, 231 Fed App 349 (5th Cir. 2007)

Wikipedia.org

WEB SEARCHES

- 1.) Domestic Violence Firearms (Gun Ban / Lautenberg Amendment)
- 2.) United States Dept of Justice - ATF.gov
search: Misdemeanor Crime of Domestic Violence
- 3.) The National Domestic Violence Hotline - www.thehotline.org/
search: a.) Firearms
b.) Saving Women's Lives
- 4.) Law Center to Prevent Gun Violence - <http://smartgunlaws.org>
search: DV & Firearms in NY
- 5.) National Center on Protection Orders and Full Faith & Credit
www.fullfaithandcredit.org

REPRESENTATION BY THE ATTORNEY FOR THE CHILD

Harriet R. Weinberger, Esq.
Director, Office of
Attorneys for Children
Supreme Court, Appellate Division
Second Judicial Department
335 Adams Street, Suite 2400
Brooklyn, NY 11201
(718) 923-6350
2014

TABLE OF CONTENTS

I. Role of the Attorney for the Child.....	1
§7.2 Function of the Attorney for the Child.....	1
Non-Discretionary Appointments.....	2
Continuity of Representation.....	2
Discretionary Appointments.....	2
When the Attorney for the Child Advocates a Contrary Position.....	4
II. Child’s Right to Independent and Active Representation.....	6
III. Guidelines for Representation:	
A. Summary of the Responsibilities of the Attorney for the Child.....	11
B. Attorney-Client Privilege.....	12
C. <i>Ex Parte</i> Communications.....	13
D. Attorney for the Child Does Not Make Reports.....	14
IV. Relieving or Disqualifying the Attorney for the Child.....	15
V. Compensation of Attorneys Representing Children in Custody/Visitation Cases.....	20
VI. Duration of Appointment and Right to Appeal.....	22
Cases of Interest	27

I. The Role of the Attorney for the Child

Family Court Act § 241 sets forth the statutory authority for the appointment of [attorneys for children] in court proceedings. The statute declares that a system of [attorneys for children] is necessary for minors who often require the assistance of counsel to help protect their interests and help them express their wishes to the court. Accordingly, the role of the [attorney for the child] is to serve as a child's lawyer. The [attorney for the child] has the responsibility to represent and advocate the child's wishes and interests in the proceeding or action.

A rule relating to the function of the attorney for the child has been promulgated by order of the Chief Judge dated October 17, 2007 as follows:

§7.2 Function of the attorney for the child.

(a) As used in this part, "attorney for the child" means a law guardian appointed by the family court pursuant to section 249 of the Family Court Act, or by the supreme court or a surrogate's court in a proceeding over which the family court might have exercised jurisdiction had such action or proceeding been commenced in family court or referred thereto.

(b) The attorney for the child is subject to the ethical requirements applicable to all lawyers, including but not limited to constraints on: ex parte communication; disclosure of client confidences and attorney work product; conflicts of interest; and becoming a witness in the litigation.

(c) In juvenile delinquency and person in need of supervision proceedings, where the child is the respondent, the attorney for the child must zealously defend the child.

(d) In other types of proceedings, where the child is the subject, the attorney for the child must zealously advocate the child's position.

(1) In ascertaining the child's position, the attorney for the child must consult with and advise the child to the extent of and in a manner consistent with the child's capacities, and have a thorough knowledge of the child's circumstances.

(2) If the child is capable of knowing, voluntary and considered judgment, the attorney for the child should be directed by the wishes of the child, even if the attorney for the child believes that what the child wants is not in the child's best interests. The attorney should explain fully the options available to the child, and may recommend to the child a course of action that in the attorney's view would best promote the child's interests.

(3) When the attorney for the child is convinced either that the child lacks the capacity for knowing, voluntary and considered judgment, or that following the

child's wishes is likely to result in a substantial risk of imminent, serious harm to the child, the attorney for the child would be justified in advocating a position that is contrary to the child's wishes. In these circumstances, the attorney for the child must inform the court of the child's articulated wishes if the child wants the attorney to do so, notwithstanding the attorney's position.

Non-Discretionary Appointments

Family Court Act § 249(a) mandates that [an attorney for the child] be appointed in juvenile delinquency proceedings, person in need of supervision (PINS) proceedings, child protective proceedings, termination of parental rights proceedings, contested adoption proceedings, foster care proceedings, and proceedings pursuant to FCA § 158 (protective custody of material witnesses).

Continuity of Representation

Family Court Act § 249(b) encourages the continuity of representation. FCA § 249(b) states: "In making an appointment of [an attorney for the child] pursuant to this section, the court shall, to the extent practicable and appropriate, appoint the same [attorney] who has previously represented the child." *See also* New York State Bar Association Committee on Children and the Law, *Standards for Attorneys Representing Children in Custody, Visitation and Guardianship Proceedings*, Standard E-4, at 21 [June 2008].

In *Kristi L.T. v Andrew R.V.*, 48 AD3d 1202 (4th Dept 2008), the Appellate Division, citing FCA § 249(b), found that it was error for the Family Court to appoint a new attorney for the child when the mother objected to the appointment of an attorney that represented the child in two previous matters. The prior attorney for the child was available and should have been reappointed.

In *Linda S. v Westchester County Dept. of Social Services*, 63 AD3d 1164 (2d Dept 2009), in a custody proceeding (where the maternal grandmother was seeking visitation), the Appellate Division found that contrary to the Family Court's conclusion, that branch of the petitioner's motion to remove the attorney for the children was not rendered academic by the completion of the adoption process, since it was still possible that the attorney would be required to represent the children in further proceedings relating to the petitioner's efforts to obtain visitation with the subject children (including this appeal.) Nevertheless, the Court held that the petitioner failed to demonstrate that removal of the attorney for the children was warranted.

Discretionary Appointments

Custody Proceedings

The court has the discretion to appoint an attorney for the child in any other proceeding in which the Family Court has jurisdiction.

In *Borkowski v Borkowski*, 90 Misc 2d 957 (Sup Ct, Steuben County 1977), the Court held that children in a custody dispute were entitled to legal representation. The court stated: "If

custody of a child is of fundamental importance to a parent so that he is entitled to legal representation, can the determination be less important to the child?" Neither the court nor the parent can adequately represent the legal interests of a child in a custody dispute and "the most effective means of protecting the child's interest...is by independent counsel for the child.... The possibility that parental rights will prevail over the children's rights is clearly a danger in the instant case, a danger which may only be avoided by the appointment of a An attorney for the child."

In *Frizzel v Frizzel*, 177 AD2d 825 (3d Dept 1991), the Appellate Division held that although the appointment of an attorney for the child in a custody proceeding is not mandatory, having exercised its discretion by appointing an attorney for the child, the Supreme Court's unexplained decision to hold a hearing without him 12 days later was an abuse of discretion.

In *Vecchiarelli v Vecchiarelli*, 238 AD2d 411 (2d Dept 1997), upon reviewing the record, in the court's view, it was an improvident exercise of discretion for the Supreme Court to fail to appoint counsel for the parties' two children prior to a custody hearing. The Appellate Division stated that "The [attorneys for the children] would have been able to recommend alternatives for the court's consideration and to advocate for the children in these proceedings." (citing *Blauvelt v Blauvelt*, 219 AD2d 694 (2d Dept 1995)).

In *Farnham v Farnham*, 252 AD2d 675 (3d Dept 1998), the Court held that the Family Court's failure to appoint an attorney for the children did not warrant a reversal, but emphasized the contributions competent counsel for children routinely make in contested matters stating: "they not only protect the interests of the children they represent, they can be valuable resources to the trial court."

In *A.C. v D.R.*, 36 AD3d 465 (1st Dept 2007), in a custody dispute, the trial court properly exercised its discretion in declining to appoint an attorney for the child, where there were no future proceedings before the court. The Appellate Division felt that the trial court adequately protected the child by enjoining the parents from discussing the litigation with the child, by forbidding the mother from attending the child's medical appointments and by resolving the scheduling of the child's extra-curricula activities.

In *Amato v Amato*, 51 AD3d 1123 (3d Dept 2008), in a bitter custody dispute where the father was awarded sole custody of the child, the Appellate Division found that the Family Court's failure to appoint an attorney for the child was an abuse of discretion. The child was deprived of an advocate to further investigate the fitness of the parents, to develop the record and assess the interests of the child, and to present evidence as to his interests beyond that offered by the parties.

Likewise, in *Betts v Betts*, 51 AD3d 699 (2d Dept 2008), in a contentious matrimonial action, the appointment of an attorney for the children was warranted as there were allegations that the children were subjected to inappropriate corporal punishment. The Supreme Court's order was reversed for that limited reason.

Family Offense Proceedings

In *Matter of Berg v Mantia*, 77 AD3d 827 (2d Dept 2010), the Attorney for the Children appealed the Family Court's dismissal of a family offense proceeding. Here, the mother had brought the petition against the husband on behalf of their three children. The Appellate Division reversed the Family Court's dismissal having found that the mother had standing to file an action on behalf of her children (*see* FCA §§ 821, 822). The Family Court erred when it determined that the subject children had not been named as parties to the petition and failed to consider the evidence of the family offenses committed against the children.

In *Matter of Pamela N. v Neil N.*, 93 AD3d 1107 (3rd Dept 2012), the Appellate Division held that while not statutorily mandated, it was well within the Family Court's discretion to appoint an attorney for the parties' children to protect the children's interests in family offense and custody proceedings. Citing to *Matter of Berg v Mantia*, the Court rejected the father's claim that the children or their attorney lacked standing to seek reinstatement of the mother's family offense petition on appeal, noting that the children themselves could have originated a family offense proceeding against the father.

Paternity Proceedings

In *Matter of Darlene L.- B.*, 27 AD3d 564 (2d Dept 2006), the Appellate Division held that the Family Court erred when it dismissed the mother's petition to vacate an acknowledgment of paternity without first appointing an attorney for the child to represent the best interests of the child and holding a hearing to determine the best interests of the child. The Court held that if and only if there was a determination that there should not be an estoppel based on the child's best interests, then the Family Court could proceed with genetic testing to determine the parentage of the child.

When the Attorney for the Child Advocates a Contrary Position

Under the Rules of the Chief Judge § 7.2 (d) (3), the attorney for the child may take a contrary position to that of his/her client:

“When the attorney for the child is convinced either that the child lacks the capacity for knowing, voluntary and considered judgment, or that following the child's wishes is likely to result in a substantial risk of imminent, serious harm to the child...In these circumstances, the attorney for the child must inform the court of the child's articulated wishes if the child wants the attorney to do so, notwithstanding the attorney's position.”

The New York Rules of Professional Conduct provide that a lawyer may take reasonably necessary protective action when he/she reasonably believes that his/her client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken, and cannot adequately act in his/her own interest (see Rule 1.14).

See also New York State Bar Association Committee on Children and the Law Standards for Attorneys Representing Children in Custody, Visitation and Guardianship Proceedings,

Standard A-3, at 4 [June 2008], which is consistent with Rule 7.2. The Standards provide that if the attorney is going to substitute his/her judgment that is contrary to the child's articulated position, he/she should be prepared to introduce evidence to support the attorney's position. In formulating substituted judgment, the attorney:

(1) Must conduct a thorough investigation, which includes interviewing the child, reviewing the evidence, and applying it against the applicable legal standard; and

(2) Should consider the value of consulting a social worker or other mental health professional to assist the attorney in determining whether it is appropriate to override the child's articulated position and/or to assist the attorney in formulating a legal position on behalf of a child who is not competent (see A-3).

(New York State Bar Association Committee on Children and the Law **Standards for Attorneys Representing Children in Custody, Visitation and Guardianship Proceedings**, Standard A-2, at 5 [June 2008].)

In *Matter of Carballeira v Shumway*, 273 AD2d 753 (3d Dept 2000), the Court held that the attorney for the child properly took a position contrary to the child's expressed preference to live with his mother, where the child was eleven years old, suffered from numerous emotional disorders, and his judgment was impaired by the degree of control exercised by the mother over him. The court noted that the consistent strong preference of the parties' child to live with his mother was acknowledged by the attorney for the child and repeatedly communicated to Family Court. It was noted that "neutral" psychologist appointed by Family Court opined that the child was certainly intelligent but somewhat less mature than average and could be easily manipulated by adults. The record further indicated that the child might have been blinded by his love for his mother who exerted influence on his preference concerning custody, and that the child did not articulate objective reasons for his preference (other than his dislike of discipline at the father's home and the lack of rules and discipline at the mother's home).

See also, *Matter of James "MM"*, 294 AD2d 630 (3d Dept 2002), which cites *Matter of Carballeira v Shumway, supra*: an attorney for the child "has a statutorily directed responsibility to represent [a] child's best wishes as well as to advocate the child's best interest" and states that where there is a conflict between the two, he/she may advocate the position that promotes the child's best interest as deemed by the attorney for the child.

Another important case on this issue is *Matter of Derick Shea D.*, 22 AD3d 753, (2d Dept 2005), where the Attorney for the child expressed his opinion that it was in the best interests of the subject children, ages 10 and 14, to terminate the mother's parental rights but failed to advise the Court that the children wished to be with their mother. The Court held that the attorney for the children's failure to express the children's wishes required the proceedings to be remitted for new dispositional hearings. Here, the attorney for the children should have stated both the children's wishes and his contrary position.

In the *Matter of Delaney v Galeano*, 50 AD3d 1035 (2d Dept 2008), upon the receipt of letter from a 14-year-old child that indicated he did not wish to proceed with the appeal filed on

his behalf by his attorney, the Appellate Division required the parties or their attorneys to show cause why the appeal should not be dismissed as withdrawn. In response to that order to show cause, the Court found that the attorney for the child failed to demonstrate any basis for properly disregarding the child's preference (see NYCRR 7.2[d][3]). It was noted that the child on numerous occasions has expressed concern that his attorney was not representing his wishes. The motion was granted and the appeal was dismissed.

In the *Matter of Krieger v Krieger*, 65 AD3d 1350 (2d Dept 2009), the Family Court erred in requiring the attorney for the child to offer expert testimony on the issues of the child's capacity to articulate her desires and whether the child would be at imminent risk of harm if she moved with the father to the State of Ohio, prior to the attorney advocating a position that could be viewed as contrary to the child's wishes. The Court noted that **22 NYCRR 7.2** does not impose such a requirement.

In *Perry-Bottinger v Bottinger*, 68 AD3d 670 (1st Dept 2009), the Appellate Division affirmed the Supreme Court's denial of the plaintiff's motion to disqualify the attorney for the children. The record supported the attorney for the children's claim that he formed an opinion as to the impairment of the children as a result of his interactions with the parties during the course of his representation and his consideration of the conclusions in the forensic report and proof of plaintiff's conduct. His advocacy of the children's best interests based on that opinion was a proper exercise of his authority and did not form a basis for his disqualification (see *Matter of Carballeira*, supra). The Court rejected the plaintiff's contention that the attorney was impermissibly biased against her.

In *Matter of Alyson J.*, 88 AD3d 1201 (3d Dept 2011), the Appellate Division found that the record supported the Family Court's adjudication of neglect, and further, that the attorney for the children did not fail to adequately represent the children's interests when he took a position contrary to the children's wishes. At the fact-finding, the attorney for the child advocated a position on behalf of his clients', and properly informed the court that he was deviating from his clients' wishes.

See also *Swinson v Dobson*, 101 AD3d 1686 (4th Dept 2012), where the Appellate Division found no evidence that the child was not capable of knowing, voluntary, and considered judgment, or that following the child's wishes was likely to result in a substantial risk of imminent, serious harm to the child. Thus, the attorney for the child properly advocated the wishes of his client pursuant to 22 NYCRR 7.2 (d) (2).

In *Mason v Mason*, 103 AD3d 1207 (4th Dept 2013), the petitioner mother appealed from an order that modified the parties' joint custody arrangement by granting sole custody of the parties' child to respondent father following a hearing. The mother argued that the Attorney for the Child (AFC) improperly advocated a position that was contrary to the child's express wishes because the AFC failed to state the basis for advocating that contrary position. The Appellate Division found no merit in the mother's contention. " There are only two circumstances in which an AFC is authorized to substitute his or her own judgment for that of the child: '[w]hen the [AFC] is convinced either that the child lacks the capacity for knowing, voluntary and considered judgment, or that following the child's wishes is likely to result in a substantial risk of imminent, serious harm to the child' " (citing *Swinson v Dobson*, supra, quoting 22 NYCRR 7.2[d][3]).

The obligation of the AFC, where the AFC is “convinced” that one of those two circumstances is implicated, is to inform the court of the child's wishes, if the child requests that the AFC do so (*see* 22 NYCRR 7.2[d][3]), which the AFC did here. Moreover, the Appellate Division noted that the record supported a finding that the child lacked the capacity for “knowing, voluntary and considered judgment” (*see* 22 NYCRR 7.2[d][3]).

II. Independent and Active Representation

A. Child’s Right to Independent Representation

The courts have established that a child is entitled to independent representation. For instance, in *Fargnoli v Faber*, 105 AD2d 523 (3d Dept 1984), a bitterly contested visitation case, the trial court recused the Attorney for the child retained by the parents and assigned a new Attorney. The Appellate Division held that parents may not “become involved in the representation of the children because the appearance or possibility of a conflict of interest or likelihood that such interference would prevent the children’s representation from being truly independent.”

In *Matter of Stien v Stien*, 130 Misc 2d 609 (Fam Ct, Westchester County 1985), the court held that “the [attorney for the child] must protect the child against both parents and has a duty to resist either of them, or either counsel, if the youthful client’s interests seem to require it.” The [attorney for the child] must participate in the questioning of the parties and the witnesses to elicit information for the record and represent to the court whether, in her opinion, the client, in fact, has an ascertainable reasonably settled point of view that the court can be made aware of, what the child seems to want, and what, in her considered judgment, based on all the facts, would be best for the child. Likewise, the Court’s decision in *Blank v Blank*, 124 AD2d 1010 (4th Dept 1986), stated that an attorney for the child is appointed to protect the rights of the children, not for the benefit of the parents. *See also Matter of Nathaniel T.*, 67 NY2d 838 (1986).

In the case of *Davis v Davis*, 269 AD2d 82, (4th Dept 2000), the defendant’s former husband sought modification of a custody and visitation schedule that originally was established by consent. Plaintiff cross-moved for custody and removal of the children’s attorney on the ground that the attorney was biased towards the father because the father had contacted the attorney and paid the attorney’s fee. The court denied the motion, but the Appellate Division reversed, holding that an attorney for the child “who has been retained and paid by one of the contesting parties is indelibly cast, either actually or ostensibly, as partial to the party who hired him or her.”

Likewise, in *Matter of David D.*, 6 Misc 3d 1008(A) (Fam Ct, Suffolk County 2004), where the parents hired an attorney to represent their son who was charged as a juvenile delinquent for alleged acts of sex abuse against his younger sibling, the Family Court held there was a conflict of interest as the circumstances of the case cast doubt on whether the attorney hired by the parents could “provide truly independent legal representation”. Therefore, the attorney was removed and was substituted by an attorney from an institutional provider.

In *Matter of Brittany W.*, 25 AD3d 560 (2d Dept 2006), the Appellant Division found no

evidence that the attorney for the child had a conflict of interest or failed to diligently represent the best interests of the child. Contrary to the appellant's contention, the Attorney for the child did not show bias against him by adopting a position favoring the subject child's current and almost exclusive custodial placement. The Court noted that "the role of [attorney for the child] is to be an advocate for and represent the best interests of the child, not the parents".

See also *Matter of Jason A.C.*, 30 AD3d 1110 (4th Dept 2006), which cites *Matter of Brittany W, id*: contrary to the petitioner father's contention, the Family Court properly refused to replace the attorney for the child based on the attorney's alleged bias against him. The fact that the attorney for the child adopted a position unfavorable to the father during prior proceedings did not establish bias on the part of the attorney for the child whose role is to be an advocate for the child.

Recently, in *Matter of Luizzi v Collins*, 60 AD3d 1062 (2d Dept 2009), the Appellate Division, also citing *Matter of Brittany W.*, found that the attorney for the children took an active role in the proceedings and adequately represented the children's interests, and the mere fact that the attorney for the children did not adopt the father's position did not demonstrate bias (citing *Hanehan v Hanehan*, 8 AD3d 712 (3rd Dept 2004).

In *Anonymous v Anonymous*, 102 AD3d 640 (2d Dept 2013) citing *Koppenhoefer v Koppenhoefer, supra*, the Appellate Division found, that the facts underlying a proceeding in a matrimonial action, where the mother moved to modify joint custody provisions so as to award her sole custody of parties' children, warranted independent representation of the interests of the parties' children. The mother's affidavit contained specific allegations concerning the father's repeated violations of the custody provisions of the agreement since its inception. Moreover, the full-time employment of the children's therapist, the person designated in the agreement as a neutral third-party "arbitrator" of custodial disputes, by the father, constituted a significant change of circumstance which could undermine the integrity of the agreement's custodial provisions. Upon determining that the mother was entitled to a hearing on her motion, the Appellate Division further held that given the particular facts of this case, the interests of the children should be independently represented. The matter was remitted to the Supreme Court, for the appointment of an attorney to represent the interests of the children, and thereafter for a hearing and a new determination.

B. The Attorney for the Child's Duty of Active Representation & Advocacy

The attorney for the child is required to actively represent his/her clients. The court in *Koppenhoefer v Koppenhoefer*, 159 AD2d 113 (2d Dept 1990) held that the [attorney for the child] must act as "champion of the child's best interest, as advocate for the child's preferences, as investigator seeking the truth on controverted issues, or may serve to recommend alternatives for the court's consideration. (See also *General v General*, 31 AD3d 551 (2d Dept 2006), in a custody proceeding, the Family Court's failure to appoint an attorney for the child to represent the child's interests was an abuse of its discretion). In *B.A. v L.A.*, 196 Misc 2d 86 (Fam Ct, Rockland County 2003), the court stated that "the role of the [attorney for the child] is not merely

being a neutral by looking out for the best interests of the child, but as an advocate participating fully in the pre-trial stages and trial stages of any proceedings.”

In *Matter of Jamie TT*, 191 AD2d 132, (3d Dept 1993), the Court held that the child had a right to counsel not only under the Family Court Act, but also under the Federal and State Constitutions as an element of due process to which a child was entitled by virtue of his or her liberty interest in the outcome of the action. The Court found the child’s entitlement to effective assistance to be no less than that of an accused in a criminal proceeding, and stated that it was the obligation of the attorney for the child to make certain that the evidence supporting the allegations was fully developed. Additionally, in *Matter of Elizabeth R.*, 155 AD2d 666 (2d Dept 1989), the case was reversed and remanded as the attorney for the child had failed to take an active role in the proceeding.

In *Matter of Dominique A.W.*, 17 AD3d 1038 (4th Dept 2005), the Family Court terminated the mother’s parental rights of her five children. The attorney for the child represented all five children, however, never interviewed the oldest child who was 17 years old and residing in a residential facility. The Appellate Division agreed with the Family Court that termination of the mother’s parental rights as to the four younger children was in their best interests. However, the Appellate Division found that the Family Court abused its discretion in terminating the mother’s parental rights with respect to the 17 year old. It was noted that the attorney for the child admitted on oral argument of this appeal that he never met with this child and believed that she was “AWOL”. The Appellate Division pointed out that the record made no mention of the child being “AWOL”. The Court further stated that the attorney for the child did not advocate a specific dispositional plan or inform the Family Court of the child’s wishes as required by the Guidelines for Law Guardians in the 4th Department and, furthermore, the attorney for the child failed to comply with similar provisions set forth by the New York State Bar Association’s Committee on Children and the Law in their Law Guardian Representation Standards. The case was remitted for the appointment of a new attorney for the child and a new dispositional hearing.

In *Matter of Figueroa v Lopez*, 48 AD3d 906 (3rd Dept 2008), in a custody proceeding, the attorney for the child did not consent to a stipulation. The Family Court did not permit him to explain his position on the record. He had reportedly obtained information (including possible domestic violence by the father) which made him concerned about unsupervised visitation by the father. The Appellate Division reversed the Family Court’s order which granted the father’s petition to modify the prior order of custody. Although the appointment of the attorney for the child was not statutorily required, the Court noted that having made the appointment, the Family Court could not relegate the attorney for the child to a meaningless role and that he/she must be afforded the same opportunity as any other party to fully participate in a proceeding.

In *Matter of Christina M.M.*, 48 AD3d 1202 (4th Dept 2008), the Family Court, without conducting a hearing, granted the mother’s motion for summary judgment seeking to terminate visitation between the parties’ daughter and the father who was incarcerated. The Appellate Division agreed with the father that the Family Court erred in granting the mother’s motion without conducting a hearing. The Court noted that the record was devoid of information

concerning the circumstances relevant to the issue of whether visitation with the father was in the child's best interests. It was further noted that although the attorney for the child appeared for argument on the mother's motion, the record did not reflect any advocacy on behalf of the child.

In *Cieri v Cieri*, 56 AD3d 409 (2d Dept 2009), in a custody proceeding, the Supreme Court, without conducting a hearing, granted the father's motion to modify the custody agreement and awarded him sole custody of the parties' child. The Appellate Division held that the Supreme Court should not have decided the father's motion, based on controverted allegations, in the absence of the attorney for the child and without holding any hearing. At a minimum, the best interest of the 17-year-old teenager and her preferences could have been explored.

In *Bhardwaj v Bhardwaj*, Sup Ct., Nassau County, April 23, 2009, Ross, J., Index No. 200166/06, the court admonished the father and his counsel for filing a frivolous cross motion seeking sanctions against the attorney for the children. It was noted that the attorney for the children zealously represented her clients, acted properly as their advocate and that her argument in support of the children's stated preference was to be expected, and was not, by itself, indicative of bias or prejudice against either parent. Here, the court declined to impose sanctions against the father and his attorney in view of the fact that an apology was extended, and the father's attorney voluntarily tendered the expenses and fees incurred by the attorney for the child in defending the cross-motion for sanctions. Citing *Rogovin v Rogovin*, 27 AD3d 233 (1st Dept. 2006) where the court could find no basis to disqualify the attorney for the child, "who, having determined that child was unimpaired in accordance with local standards, properly acted as the child's advocate in urging retention of custodial status quo, rather than as aide to court in determining child's best interests."

In *Matter of Mark T. V Joyanna U.*, 64 AD3d 1092 (3d 2009), the Appellate Division found that the child had not received meaningful assistance of appellate counsel. Citing *Matter of Dominique A.W.*, *supra*, the Court stated that the child was at the least, entitled to consult with and be counseled by his assigned attorney, and to have the opportunity to articulate a position which –with the passage of time–may have changed, and to explore whether to seek an extension of time within which to bring his own appeal of the Family Court's order. The Court noted that nothing in the record indicated that the child, who was 11 ½ years of age at the time of the argument of the appeal, suffered from any mental infirmity. The Court went on to state that the attorney for the child, absent any of the extenuating circumstances set forth in **22 NYCRR 7.2(d)(3)**, should have met with the child and should have been directed by the wishes of the child, even if he believed that what the child wanted was not in the child's best interests.

In *Lewis v Fuller*, 69 AD3d 1142 (3d Dept 2010) citing *Matter of Mark T. V Joyanna U.*, *supra*, the Appellate Division held the child's appellate counsel failed to fulfill her essential obligation in not consulting with and advising her client when proceeding with the appeal. The child's appellate counsel was relieved of her assignment, and the decision of the Court was withheld so that a new appellate attorney could be assigned to represent the child to address-after consulting with and advising the child-any issue that the record might disclose.

In *O'Loughlin v Sweetland*, 72 AD3d 1093 (2d Dept 2010), in a custody proceeding, the

Appellate Division, citing *Krieger v Krieger, supra*, found that the Family Court should not have granted the mother's cross motion to dismiss the father's motion without a hearing. At issue was whether vacatur of the parties' stipulation was warranted. The Court further held that the hearing should include the participation of the child's appointed counsel. The matter was remitted.

See also *Matter of R.O. v. Cond-Arnold*, 99 A.D.3d 801 (2d Dept 2012), where the Appellate Division found that the Family Court erred in dismissing the father's petitions without providing the attorney for the child a reasonable opportunity to present evidence.

In *McDermott v Bale*, 94 AD3d 1542 (4th Dept 2012), the attorney for the children (AFC) appealed from an order of the Supreme Court which granted the parties joint custody of their two children, with primary physical residence to petitioner-respondent mother and liberal visitation to respondent-petitioner father. The order incorporated the terms of a written stipulation executed by the parties on the eve of trial. The AFC refused to join in the stipulation, and the Family Court approved the stipulation over the AFC's objection. Here, the Appellate Division rejected the rejected the AFC's contention that the court erred in approving the stipulation. Citing to *Matter of Figueroa v Lopez, supra*, the Appellate Division agreed with the AFC that the court may not "relegate the [AFC] to a meaningless role", however, the children represented by the AFC are not permitted to "veto" a proposed settlement reached by their parents and thereby force a trial. The record revealed that, unlike in *Matter of Figueroa, supra*, the court here gave the AFC a full and fair opportunity to be heard, and the AFC stated in detail all of the reasons that he opposed the stipulation. The record also revealed that the court gave credence to many of the comments made by the AFC, as did the attorneys for the parents, both of whom agreed to modify the stipulation to address several of the AFC's concerns. The Appellate Division noted that the purpose of an attorney for the children is "to help protect their interests and to help them express their wishes to the court" (FCA § 241), and that there is a significant difference between allowing children to express their wishes to the court and allowing their wishes to scuttle a proposed settlement. It was further noted that the court is not required to appoint an attorney for the children in contested custody proceedings, although that is no doubt the preferred practice.

III. Guidelines for Representation

A. Summary of Responsibilities of The Attorney for the Child

On October 4, 2007, the Administrative Board of the Courts approved the Statewide Law Guardian Advisory Committee's **Summary of Responsibilities of The Attorney for the Child** which is as follows:

While the activities of the attorney for the child will vary with the circumstances of each client and proceeding, in general those activities will include, but not be limited to, the following:

- (1) Commence representation of the child promptly upon being notified of the appointment;
- (2) Contact, interview and provide initial services to the child at the earliest practical opportunity, and prior to the first court appearance when feasible;
- (3) Consult with and advise the child regularly concerning the course of the proceeding, maintain contact with the child so as to be aware of and respond to the child's concerns and significant changes in the child's circumstances, and remain accessible to the child;
- (4) Conduct a full factual investigation and become familiar with all information and documents relevant to representation of the child. To that end, the lawyer for the child shall retain and consult with all experts necessary to assist in the representation of the child.
- (5) Evaluate the legal remedies and services available to the child and pursue appropriate strategies for achieving case objectives;
- (6) Appear at and participate actively in proceedings pertaining to the child;
- (7) Remain accessible to the child and other appropriate individuals and agencies to monitor implementation of the dispositional and permanency orders, and seek intervention of the court to assure compliance with those orders or otherwise protect the interests of the child, while those orders are in effect; and
- (8) Evaluate and pursue appellate remedies available to the child, including the expedited relief provided by statute, and participate actively in any appellate litigation pertaining to the child that is initiated by another party, unless the Appellate Division grants the application of the attorney for the child for appointment of a different attorney to represent the child on appeal.

B. Attorney-Client Privilege

The child has an attorney-client relationship with his or her attorney. Without any willingness on the part of the child to waive his or her privilege and permit the attorney for the child to testify or express opinion regarding her veracity, such testimony may not be given. The attorney for the child should resist any attempt to be called as a witness in a pending proceeding or any subsequent proceeding. The attorney for the child should move to quash subpoenas or

preclude testimony on the ground of privilege or other ground whenever there is an attempt to place the attorney for the child in a role as a witness against the client (See *In re Rebecca B. v Michael B.*, 227 AD2d 315 (1st Dept 1996) and *Matter of Morgan v Becker*, 245 AD2d 889 (3d Dept 1997)).

In *Bentley v Bentley*, 86 AD2d 926 (3d Dept 1982), the Appellate Division held that the petitioner was not denied due process by the Family Court’s refusal to allow cross-examination of the children’s attorney concerning his interviews with the two children. In dicta the court noted that the interviews are privileged since the relationship between the children and their attorney was one of “attorney-client” and, as such, is not subject to cross examination. Communications between the child-client and the attorney for the child are “clearly clothed with the testimonial privilege.”

Consequently, in *Matter of Angelina A.A.*, 211 AD2d 951 (3d Dept 1995), the attorney for the child could not testify, in the proceeding to adjudicate the respondent’s children to be abused and/or neglected, with regard to the veracity of statements made by the child at in camera interview during which the attorney was present.

If the child tells the attorney for the child something the attorney believes will harm the child, but the child wishes it to be kept a secret, careful consideration is warranted. The attorney for the child, in the role as counselor, must first attempt to convince a child-client that the consent to disclosure is the best course of action (see *Matter of Carballeira v Shumway, supra*). If that is not successful, there are several considerations. First, attorneys for children are not mandatory reporters to child protective services. Second, the New York Rules of Professional Conduct permit disclosure when the lawyer reasonably believes such disclosure is “impliedly authorized to advance the best interests of the client and is either reasonable under the circumstances or customary in the professional community”; or will “prevent reasonable certain death or substantial bodily harm” (See Rule 1.6).

In *Campolongo v Campolongo*, 2 AD3d 476, (2d Dept 2003), the Supreme Court properly granted the attorney for the child’s motion to disqualify the father's attorney and to preclude him from using the psychiatrist's report and testimony as evidence in the pending custody dispute. That attorney violated the Code of Professional Responsibility DR 7-104 (A) (1) , which was then in effect, by allowing the psychiatrist, that he caused the defendant father to retain, to interview the subject child and to prepare a report without the knowledge and consent of the attorney for the child. The attorney for the child was appointed to protect the interests of a child, which created an attorney-client relationship. The absence of the child’s attorney at the subject interview constituted a denial of the child's due process rights.

C. Ex Parte Communications

Engaging in *ex parte* communication without expressed approval of all parties is an improper practice. As stated in the 1995 Annual Report on the Commission of Judicial Conduct:

“[Attorneys] who are appointed by the court to represent the children in family disputes are often seen as having a special role because they represent an innocent

party whose best interest is the very focus of the underlying litigation before the court. Notwithstanding this special role, the [attorney for the child] is also a lawyer who is bound by the same rules as other lawyers in the litigation and who is not entitled to private communications with the court to which the other parties are not privy...”

Understanding the role of the attorney for the child is especially important because, in the course of representing the child, the attorney will be privy to much unsubstantiated gossip and hearsay from the rival parties which should not reach the judge without an opportunity for the adverse party to rebut it. Some judges, in seeking to determine the best interests of the child, may seek to learn through the attorney for the child the very gossip and hearsay that would be inadmissible in court. In *Brice v Mitchell*, 184 AD2d 1008 (4th Dept 1992), the trial judge was reversed for relying on hearsay information provided by the attorney for the child.

The New York State Bar Association Committee on Children and the Law, specifically states “*The attorney for the child is not an arm of the court and should not engage in ex parte communications with the court.*” (**Standards for Attorneys Representing Children in Custody, Visitation and Guardianship Proceedings**, Commentary to Standard B-1, at 9 [June 2008].)

D. The Attorney for the Child Does Not Make Reports or Recommendations

In *Weiglhofer v Weiglhofer*, 1 AD3d 786 (3d Dept 2003), the Appellate Division emphasized in a footnote that “the law guardian is the attorney for the children and not an investigative arm of the court”. It appeared from the record that the Supreme Court had relied on a “report” from the child’s attorney. The Court went on to say “While law guardians, as advocates, may make their positions known to the court orally or in writing (by way of, among other methods, briefs or summations), presenting reports containing facts which are not part of the record or making submissions directly to the court ex parte are inappropriate practices”. (See *Weiglhofer v Weiglhofer*, *id*; *Matter of Rueckert v Reilly*, 282 AD2d 608 (2d Dept 2001); *Reed v Reed*, 189 Misc 2d 734 (Sup Ct., Richmond County 2001) and the New York State Bar Association Committee on Children and the Law, *Standards for Attorneys Representing Children in Custody, Visitation and Guardianship Proceedings*, Standard C-7 at 15 [June 2008]. See also *Cobb v Cobb*, 4 AD3d 747 (4th Dept 2004), lv denied 2 NY3d 759 (2004)).

In *Graham v Graham*, 24 AD3d 1051,(3d Dept 2005), the Family Court improperly directed the attorney for the child to file a “report”. Although the attorney characterized his written submission as his “summation” and relied on evidence in the record in support of his position, the Family Court referred to it as a “report” and adopted it in its entirety in lieu of making independent findings in its own decision. Furthermore, the attorney for the child made “recommendations” in his submission.

In *Matter of Devin XX*, 20 AD3d 639 (3d Dept 2005) the Appellate Division found that the Family Court acted properly when it did not seek a recommendation from the child’s attorney

“who—as the attorney for the child—actively and effectively participated” in the proceedings and further stated that attorneys for children “are advocates, not advisors to the court”. See also *Matter of West v Turner*, 38 AD3d 673 (2d Dept 2007).

In *Rogovin v Rogovin*, 27 AD3d 233 (1st Dept 2006), the court could find no basis to disqualify the attorney for the child, “who, having determined that child was unimpaired in accordance with local standards, properly acted as the child's advocate in urging retention of custodial status quo, rather than as aide to court in determining child's best interests.”

In *Cervera v Bressler*, 50 AD3d 837 (2d Dept 2008), in a matrimonial action, the court improvidently exercised its discretion in denying the father’s application which sought to remove the attorney for the child. Here, in the order to show cause, the affirmation in support and as well in every affirmation submitted thereafter, the attorney for the child included facts which were not part of the record, but which constituted hearsay gleaned from the mother. The Appellate Division held that the attorney’s repeated ad hominem attacks on the father’s character, was both unprofessional and improper, as it amounted to the attorney acting as a witness against the father (see 22 NYCRR 7.2[b]).

In *Matter of VanDee v Bean*, 66 AD3d 1253 (3d 2009), the mother argued that the Family Court improperly relied upon the closing argument submitted by the attorney for the child because it contained recommendations and facts not in the record and because, in the mother's view, it displayed "unjustified dislike" of her. The Appellate Division, citing *Matter of Mark T. V Joyanna U., supra*, and 22 NYCRR 7.2(d)[1], found, after reading the attorney for the child’s submission as a whole, that the Family Court properly accepted it as being in the nature of a summation, as it was almost entirely based upon testimony given by witnesses during the hearing. The Court noted that the Law Guardian's account of the interviews with the child and the parties was apparently provided to establish her compliance with her obligations to consult with her client and to have a thorough knowledge of her circumstances. Citing *Weiglhofer v Weiglhofer, supra*, the Court further noted that the attorney for the child’s summation provided a foundation for her conclusion that the three-year-old client could not advise the attorney of her wishes as to placement, custody, or visitation. As to the mother’s claim that the summation reflected dislike of the mother, citing 22 NYCRR 7.2 [d] and *Matter of Carballeira v Shumway, supra*, the court stated that the attorney for the child must zealously advocate the child’s position, and it is entirely appropriate for an attorney for the child to take a position as to a proper custody disposition and to prefer one party over the other.

In *Swinson v Brewington*, 84 AD3d 1251 (2d Dept 2011), citing *Weiglhofer v Weiglhofer, supra*, the Appellate Division found that the Judicial Hearing Officer erroneously allowed the attorney for the child to refer to matters that were not in evidence, and compounded its error by refusing to allow the father to proffer documentary evidence to contradict assertions of the attorney for the child.

V. Relieving or Disqualifying the Attorney for the Child

1. When There is a Total Breakdown in Communications with the Child

Caveat: The right of the child to have new counsel does not connote the child's right to choose counsel retained for him or her by a parent. *Matter of Fagnoli v Faber*, 105 AD2d 523 (3d Dept 1984): The daughters sought to have substituted as their counsel a retained attorney who represented the mother in a prior proceeding. The motion to substitute the proposed attorney was denied, but a new attorney for the children was assigned, as the children had no confidence in the assigned attorney.

The attorney for the child should seek to and be permitted to be relieved where the child lacks sufficient confidence in the attorney to have a continuing relationship (*P. v P.*, NYLJ, 11/10/92, p. 29, c.3. (Attorney relieved because of conflict with 11-year-old in child custody case)).

Matter of Elianne M., 196 AD2d 439 (1st Dept 1993): The court had erred in denying the attorney for the child's application to be relieved, as the attorney and the teenage child had explicitly expressed their failure to communicate. The child has indicated her lack of trust in her appointed representative, her fear that the attorney would not effectively communicate her wishes to the court and her belief that the attorney had been influenced by her adoptive mother.

2. When The Attorney for the Child is Incompetent, Ineffective or Misperceives his or her Role

Matter of Jennifer G., 110 AD2d 801 (2d Dept 1985): The attorney for the child was removed from the case where, despite the mother's admitted use of excessive corporal punishment, the attorney for the child stated that there was "reason to take a risk" in returning the child to the mother. The Court stated that by doing so, the attorney did not act in the best interests of the child.

Matter of Jamie TT, supra: In a child abuse proceeding, the child was found to have not received effective representation, as the child's attorney called no witnesses and engaged in only the most perfunctory cross-examination, consisting of only three questions. The Court stated that the child "had a strong interest in obtaining State intervention to protect her from further abuse." *Id.* at 136. The matter was remitted for a new fact-finding hearing.

Matter of Colleen CC, 232 AD2d 787 (3d Dept 1996): The attorneys for the children had failed to provide the minors with effective assistance of counsel, where one of the attorneys impeached a juvenile's testimony regarding abuse and the other declined to question the juvenile. Both attorneys for the children expressed doubt as to whether the Department of Social Services had established the abuse case. The Family Court orders were reversed and remitted for the appointment of new attorneys for the children.

3. When there is a Conflict of Interest

a. Parent/Child Conflicts

1. Prior Representation

An attorney in a divorce case may not represent a child's interest in a subsequent custody case. *Bar Assn of Nassau Co.*, cite in ABA/BNA Lawyer's Manual on Prof. Conduct, 87-7 (1987); see *People ex rel. Hagan v Alfano*, 277 AD 565 (1st Dept 1950); *NY Code*, EC 7-8; NYSBA Ethics Opinion [EO] #648, 1993 WL 560288 [where the potential attorney for the child had formerly represented the parent, the conflict should be resolved in favor of new counsel for the child.]

An attorney should not represent the parent in criminal court and the child in the juvenile delinquency proceeding in Family Court. (NYSBA Ethics Opinion [EO] #648, 1993 WL 560288 [where the potential attorney for the child had formerly represented the parent, the conflict should be resolved in favor of new counsel for the child.] NB: a juvenile charged under FCA article 3 or 7 cannot "waive" his/her counsel before an attorney for the child has been appointed. (see FCA § 249-a and *Matter of Marpole*, 145 Misc 2d 549 (Fam Ct, New York County 1989)).

In *B.A. v L.A.*, 196 Misc 2d 86 (Fam Ct, Rockland County 2003), the attorney for the child was disqualified from representing the children in a visitation and custody matter, as the president of the non-profit legal aid association that employed the attorney represented an adverse party in the action.

2. Danger of Conflict when Parent Retains Attorney to Act as the Attorney for the Child

See *Matter of Fagnoli v Faber*, *supra*; *Matter of J.S. o/b/o N.H. v R.W. and S.W.*, *NYLJ*, 3/17/93 p. 21, col. 1 (Fam Ct., Rockland County), where the attorney represented the child in an adoption by her maternal grandfather, after termination of the mother's parental rights. The attorney later discovered that the grandfather was letting the child live with her mother, and moved to vacate the adoption for fraud or newly discovered evidence. The child sought to have her attorney substituted for an attorney retained by the grandfather. The motion was denied, but a new attorney for the child was appointed. See also, *Davis v Davis*, 269 AD2d 82 (4th Dept 2000).

b. Child/Child Conflicts: *Conflicting Positions of Children which Preclude Effective Joint Representation*

"If a lawyer is appointed to represent siblings, the attorney should determine if there is a conflict of interest, which could require that the lawyer decline representation or withdraw from representing some or all of the children." New York State Bar Association Committee on Children and the Law, **Standards for Attorneys Representing Children in Custody, Visitation and Guardianship Proceedings**, Standard B-2, at 9 [June 2008]. See also 1.7 of the New York Rules of Professional Conduct.

See, generally, FCA § 241. Besharov, Practice Commentary, *McKinney's Cons. Law of NY*,

Book 29A, p. 181. Co-respondents in an Article 3 proceeding, or abuse case.

Matter of H. Children, NYLJ, 2/28/94, p. 35, col. 4 (Fam Ct., Kings County): The attorney was assigned to represent both a 15-year-old girl accusing the father of sexual abuse, and the girl's siblings, who thought their sister was lying and were at risk for removal if derivative neglect was proven. The attorney who had heard confidences from all the children was disqualified, and two new attorneys were appointed.

See also *Gary D.B. v Elizabeth C.B.*, 281 AD2d 969 (4th Dept 2001), where the Court noted that the attorney's motion to withdraw from representing all of the subject children should have been granted since she articulated a conflict of interest. During the trial, the children began to express different preferences regarding the parent with whom they wished to live with and the attorney moved to be relieved from representing all four children.

In re C. Children, 282 AD2d 455 (2d Dept 2001): the attorney moved to withdraw from representation of one of five siblings after the other children made allegations of sexual abuse by that sibling. The Supreme Court removed the attorney from representing all of the children. This was found to be an abuse of discretion where there was no reasonable probability that that child had disclosed any confidences to the attorney.

In *Torelli v Torelli*, 50 AD3d 1124 (2d Dept 2008), citing *In re C. Children, supra*, the Appellate Division found that the Supreme Court properly denied the mother's motion to relieve the attorney for the parties' two sons.

c. Attorney's Relationship with Adversary (or Witness)

An attorney for the child should not be assigned to cases where he or she has been dating or is related to a parent or counsel for a parent. (NYSBA, EO #660, 1994 WL 120198).

d. Attorney's Professional Obligations

Where time constraints of the attorney for the child are such that, by reason of other professional obligations, he or she cannot serve the client's interests, or such may lead to breach of obligations to the client.

e. Attorney Stands to Profit Personally from Representation

An attorney for the child appointed to represent child(ren) in an abuse case should not bring a fee-generating civil action for money damages, on behalf of the child and/or the non-offending parent, concurrent to or subsequent to the child protective proceeding. NYSBA, EO #648, *supra*, (1993).

4. When the Attorney-Witness Rule is Violated

An attorney for the child should never act as a witness at any time during the proceeding

or action or in any subsequent proceeding by the same parties.

See *Herald v Herald*, 305 AD2d 1080 (4th Dept 2003), where the refusal to disqualify the attorney for the child on the ground that he might be called as a witness was not error, as there was no showing of necessity for the attorney's testimony, which would then invoke advocate-witness rule. Also refer to sections of these materials relating to the attorney-client privilege and reports made by attorneys.

See *Naomi C. v Russell A.*, 48 AD3d 203 (1st Dept 2008) where the Family Court was criticized for allowing the attorney for the child to repeat statements made by the child. In this case, with the parties present, the court asked the attorney for the child, on the record, to discuss the position of the 10-year-old child regarding how well the current custody arrangement was working. The Appellate Division found that the colloquy made the child's attorney an unsworn witness, and "The attorney for the child is subject to the ethical requirements applicable to all lawyers, including but not limited to...becoming a witness in the litigation" (Rules of the Chief Judge [22 NYCRR] § 7.2[b]).

In contrast, the First Department found, in *Lubit v. Lubit*, 65 AD3d 954 (1st Dept 2009), that the Supreme Court did not treat the attorney for the children as an unsworn witness by briefly referring to her opinion as to custody and her basis for it, in a non-jury trial to determine custody of the parties' children, but, instead, the court appropriately took notice of the attorney's position as the children's advocate.

2. A Court Should Decline an Application to Disqualify the Attorney for the Child in the following scenarios:

Generally, the courts should properly decline to disqualify an attorney for the child where there is no actual conflict and the attorney has not failed to diligently represent the child(ren)'s best interests. See *Rosenberg v. Rosenberg*, 261 AD2d 623 (2d Dept, 1999) [Family Court order removing the attorney from representing two of the three subject children was reversed, as there was no evidence in the record that the attorney either had a conflict of interest or had failed to diligently represent the best interests of the children.]

1. Absence of Actual Conflict

In *Matter of DSS o/b/o Jennifer M. and another*, 148 Misc 2d 584 (Fam Ct., Ulster County 1990), the court declined to disqualify the attorney representing a 13-year-old girl accusing her stepfather of sexual abuse, and a 4-year-old daughter, since the children's attorney, in advocating removal of the older child and liberal visitation for respondent with the younger child, was exercising "independent professional judgment on behalf of each client."

Apparent conflict may not be actual conflict. An attorney for the child is expected to exercise judgment in representing clients and may represent multiple children in one case if it is possible to do so without violating the duty to advocate for the wishes of each. See *Zirkind v*

Zirkind, 218 AD2d 745 (2d Dept 1995).

In re Child Welfare Admin. ex rel. Taylor G., 270 AD2d 259 (2d Dept 2000), where the Family Court improvidently exercised discretion in removing an attorney for the child from representation of one child, absent conflict of interest or evidence of failure to diligently represent the interests of both children. *See also Maurer v. Maurer*, 243 AD2d 989 (3d Dept 1997); *Smith v Smith*, 241 AD2d 980 (4th Dept 1997); *Matter of Dewey S.*, 175 AD2d 920 (2d Dept 1991).

Matter of T'Challa D., 196 Misc 2d 636 (Fam Ct, Kings County 2003): the attorney for the child was not removed in a proceeding to terminate the mother's parental rights although the mother was a former criminal client of the attorney's firm, the Legal Aid Society. As the attorney had a long-standing relationship with the child and had not obtained any information from the Legal Aid Society regarding the mother, disqualification was not warranted. *See also, Matter of Guardianship of Destiny D.*, 2002 NY Slip Op 50454(U), (Fam Ct, New York County 2002).

2. No Evidence of Bias For or Against Either Parent

Matter of Apel, 96 Misc 2d 839 (Fam Ct, Ulster County 1978): The respondent's motion to disqualify the attorney for the child because of an opinion adverse to them after a hearing was denied, as the attorney for the child was obliged to adopt a position and advocate for the children as the case progressed.

Stien v Stien, 130 Misc 2d 609 (Fam Ct, Westchester County 1985): The attorney for the child in a joint custody proceeding was not subject to being disqualified on motion by the father by reason of bias. The child's attorney did develop some opinions concerning temperaments and behavior of parties, in order to make recommendations to the court. However, there was no evidence that she had gained access to confidential or secret information which would allow her to disadvantage either party or that she had used her experience and abilities to promote the interests other than those of the subject child.

Matter of Frederick MM., 201 AD2d 842 (3d Dept 1994): The petitioner-father appealed an order of the Family Court denying him custody of his sons and extending placement with DSS, on consent of the respondent-mother and the attorney for the children. The order was affirmed as there was no evidence the children's attorney was biased against the father.

Matter of Nicole VV., 296 AD2d 608 (3d Dept 2002): The child's attorney was not impermissibly biased against the mother, as the attorney's negative opinions about the mother did not reflect personal and unreasoned prejudging of issues, but reflected professional judgment about the mother's fitness as a parent. Attorneys for children are not neutral automatons, and after appropriate inquiry, it is entirely appropriate for the attorney to form an opinion about what is in the child's best interest. *Citing Carballeira v Shumway, supra.*

In re Aaliyah Q., 55 AD3d 969 (3d Dept 2008): The fact that the attorneys for the children took a position contrary to that of respondent did not indicate bias. The Appellate Division found that the attorneys took an active role in the extended proceedings and the Family Court properly refused to remove them.

See also *Matter of Luizzi v Collins, supra.*: The mere fact that the attorney for the children did not adopt the father's position did not demonstrate bias.

IV. Compensation of Attorneys Representing Children in Custody/Visitation Cases

The court is permitted to direct the spouse or parent in a custody or visitation case to pay attorneys' fees, including fees of The attorney for the child. See Family Court Act §245 and Judiciary Law §35 (3).

See *Dept. of Social Services o/b/o Wolfson v. Wolfson*, 228 AD2d 594 (2d Dept 1996), lv denied, 89 NY2d 809 (1997). The Second Department held that the attorney for the child's fee would be reduced by the amount charged for alleged paralegal work performed by guardian's legal secretary, and that the mother would be responsible for two-thirds of the fee and father for one-third of the fee.

In *Gadomski v Gadomski*, 245 AD2d 579 (3d Dept 1997), the Appellate Division held that the Supreme Court did not err in directing that defendant pay plaintiff's counsel fees and those of the The attorney for the child, however, the case was remitted for an evidentiary hearing to determine the proper amounts for those fees.

In *Lynda A.H. v. Diane T.O.*, 243 AD2d 24 (4th Dept 1998), the Appellate Division found that "although the court properly exercised its discretion in appointing [counsel] to represent the child, it had no authority to compel the parties to pay the [child's attorney's] legal fees and expenses."

In a lower court case of interest, *Colangelo v Colangelo*, 176 Misc 2d 837 (Sup Ct, Oneida County 1998): the court held that a parent was responsible for the payment of the attorney for the child's fees based on the Doctrine of Necessities and Judiciary Law § 474, which supported a parent-paid court appointment of an attorney for the child for the parties' minor children.

In *Trinh Quoc Tran v. Tau Minh Tran*, 277 A.D.2d 49, 716 N.Y.S.2d 5 (1st Dept., 2000), the Appellate Division affirmed the Family Court's granting of the father's motion for an order modifying the parties' custody and visitation agreement and the Family Court's direction that the mother pay the fees of the attorney for the child for the instant application.

In *Lips v Lips*, 284 AD2d 716 (3d Dept 2001), the Third Department held that "Law Guardian fees shall be payable by the State."

In *Plovnick v Klinger*, 10 AD3d 84 (2d Dept 2004), the Appellate Division noted that Judiciary Law § 35 (c) provides statutory authority to require a parent to pay some or all of the attorney for the child's fee in a Family Court proceeding. The Court went on to state "While the ability to assign counsel who can be compensated from public funds helps ensure that independent advocates are available to children in emotionally charged custody disputes, the interests of justice do not dictate that payment must, in all cases, be made from public funds."

The Fourth Department, in *Jain v Garg*, 303 AD2d 985 (4th Dept 2004), the Court found that the Supreme Court did not abuse its discretion in its apportionment of the attorney for the child's fees.

In *Mars v. Mars*, 19 AD3d 195 (1st Dept 2005), the Court held that the father's motion which sought permission to assert legal malpractice and breach of fiduciary duty was not frivolous and he had standing to assert legal malpractice as an affirmative defense to the attorney for the child's fee application. The father was alleging that the attorney for the child's invoices reflected work that was never done.

In *Venicia V., v August V.*, 2013 WL 6325172 (N.Y.A.D. 1 Dept.), the Appellate Division reaffirmed the essence of the holding in *Mars v. Mars*, *supra*, namely that a parent may assert legal malpractice as an affirmative defense to the fee claim of an attorney for a child. Here, the defendant appealed from an order of the Supreme Court which granted the motion of the attorney for the children to direct him to pay outstanding fees, and awarded the attorney for the children additional fees for making the application. The Supreme Court rejected the father's argument that the Appellate Division's ruling in *Mars v. Mars*, 19 AD3d 195 (1st Dept 2005) gave a parent the right to challenge the fee of an attorney for the child on the ground of malpractice. In any event, the Supreme Court found no factual basis for the malpractice claim. The father appealed. The Appellate Division affirmed, and in addressing the father's argument, it was noted that in view of the promulgation of § 7.2, Function of the Attorney for the Child, Rules of the Chief Judge, the distinction made by the Appellate Division's ruling in *Mars v Mars*, *supra*, that a parent had standing to assert legal malpractice as an affirmative defense to the attorney for the child's fee application "to the extent of challenging that portion of the fees attributable to advocacy, as opposed to guardianship", is no longer necessary where the child is capable of decision-making, as the task of the attorney for the child is generally solely advocacy, rather than guardianship, as long as the child is capable of knowing, voluntary and considered judgment. The portion of the *Mars* decision allowing a parent to raise malpractice as a defense to a fee application for that portion of the fee earned by advocacy has become applicable to the attorney's entire fee claim.

VI. Duration of Appointment and Right to Appeal

A. Provisions of the Family Court Act

FCA § 1120. Counsel or Law Guardian on Appeal

(a) Upon an appeal in a proceeding under this act, the appellate division to which such appeal is taken, or is sought to be taken, shall assign counsel to any person upon a showing that such person is one of the persons described in section two hundred sixty-two of this act and is financially unable to obtain independent counsel or upon certification by an attorney in accordance with section eleven hundred eighteen of this article. The appellate division to which such appeal is taken, or is sought to be taken, may in its discretion assign counsel to any party to the appeal. Counsel assigned under this section shall be compensated and shall receive reimbursement for expenses reasonably incurred in the same manner provided by section seven hundred twenty-two-b of the county law. The appointment of counsel by the appellate division shall continue for the purpose of filing a notice of appeal or motion for leave to appeal to the court of appeals. Counsel may be relieved of his or her representation upon application to the court to which the appeal is taken for termination of the appointment, by the court on its own motion or, in the case of a motion for leave to appeal to the court of appeals, upon application to the appellate division. Upon termination of the appointment of counsel for an indigent party the court shall promptly appoint another attorney.

(b) Whenever a [an attorney for the child] has been appointed by the family court pursuant to section two hundred forty-nine of this act to represent a child in a proceeding described therein, the appointment shall continue without further court order or appointment where (i) the [attorney] on behalf of the child files a notice of appeal, or (ii) where a party to the original proceeding files a notice of appeal. The [attorney] may be relieved of his representation upon application to the court to which the appeal is taken for termination of the appointment. Upon approval of such application the court shall appoint another [attorney].

(c) An appellate court may appoint a [an attorney] to represent a child in an appeal in a proceeding originating in the family court where a [an attorney] was not representing the child at the time of the entry of the order appealed from or at the time of the filing of the motion for permission to appeal and when independent legal representation is not available to such child.

(d) Nothing in this section shall be deemed to relieve [attorneys for children] of their duties pursuant to subdivision one of sections 354.2 and seven hundred sixty of this act.

(e) [An attorney for the child] appointed or continuing to represent a person under this section shall be compensated and shall receive reimbursement for expenses reasonably incurred in the same manner provided by section thirty-five of the judiciary law.

(f) In any case where [an attorney for the child] is or shall be representing a child in an appellate proceeding pursuant to subdivision (b) or (c) of this section, such [attorney for the child] shall be served with a copy of the notice of appeal.

FCA § 1121. Special Procedures

1. Consistent with the provisions of sections 354.2, seven hundred sixty and one thousand fifty-two-b of this act the provisions of this section shall apply to appeals taken from orders issued

pursuant to articles three, seven, ten and ten-A and parts one and two of article six of this act, and pursuant to sections three hundred fifty-eight-a, three hundred eighty-three-c, three hundred eighty-four, and three hundred eighty-four-b of the social services law.

2. Upon the filing of such order, it shall be the duty of counsel to the parties and the [the attorney for the child] to promptly advise the parties in writing of the right to appeal to the appropriate appellate division of the supreme court, the time limitations involved, the manner of instituting an appeal and obtaining a transcript of the testimony and the right to apply for leave to appeal as a poor person if the party is unable to pay the cost of an appeal. It shall be the further duty of such counsel or [attorney for the child] to explain to the client the procedures for instituting an appeal, the possible reasons upon which an appeal may be based and the nature and possible consequences of the appellate process.

3. It shall also be the duty of such counsel or [attorney for the child] to ascertain whether the party represented by such attorney wishes to appeal and, if so, to serve and file the necessary notice of appeal and, as applicable, to apply for leave to appeal as a poor person, to file a certification of continued eligibility for appointment of counsel pursuant to section eleven hundred eighteen of this article, and to submit such other documents as may be required by the appropriate appellate division.

4. If the party has been permitted to waive the appointment of a [an attorney for the child] or counsel appointed pursuant to section two hundred forty-nine-a or two hundred sixty-two of this act, it shall be the duty of the court to advise the party of the right to the appointment of a [an attorney for the child] or counsel for the purpose of filing an appeal.

5. Where a party wishes to appeal, it shall also be the duty of such counsel or [an attorney for the child], where appropriate, to apply for assignment of counsel for such party pursuant to applicable provisions of this act, the judiciary law and the civil practice law and rules, and to file a certification of continued eligibility for appointment of counsel and, in the case of counsel assigned to represent an adult party, continued indigency, pursuant to section eleven hundred eighteen of this article and to submit such other documents as may be required by the appropriate appellate division.

6. (a) Except as provided for herein, counsel for the appellant shall, no later than ten days after filing the notice of appeal, request preparation of the transcript of the proceeding appealed therefrom.

(b) Counsel assigned or appointed pursuant to article eleven of the civil practice law and rules or section eleven hundred twenty of this act shall, no later than ten days after receipt of notice of such appointment, request preparation of the transcript of the proceeding appealed from.

(c) In any case where counsel is assigned or appointed pursuant to paragraph (b) of this subdivision subsequent to the filing of the notice of appeal, such counsel shall, within ten days of such assignment or appointment, request preparation of the transcript of the proceeding appealed from.

(d) Where the appellant is seeking relief to proceed as a poor person pursuant to article eleven of

the civil practice law and rules, the transcript of the proceeding appealed from shall be requested within ten days of the order determining the motion.

7. Such transcript shall be completed within thirty days from the receipt of the request of the appellant. Where such transcript is not completed within such time period, the court reporter or director of the transcription service responsible for the preparation of the transcript shall notify the administrative judge of the appropriate judicial district. Such administrative judge shall establish procedures to effectuate the timely preparation of such transcript. The appellate divisions may establish additional procedures to effectuate the timely preparation of transcripts.

The appellate division shall establish procedures to ensure the expeditious filing and service of the appellant's brief, the answering brief and any reply brief, which may include scheduling orders. The appellant shall perfect the appeal within sixty days of receipt of the transcript of the proceeding appealed from or within any different time that the appellate division has by rule prescribed for perfecting such appeals under subdivision (c) of rule five thousand five hundred thirty of the civil practice law and rules or as otherwise specified by the appellate division. Such sixty day or other prescribed period may be extended by the appellate division for good cause shown upon written application to the appellate division showing merit to the appeal and a reasonable ground for an extension of time. Upon the granting of such an extension of time the appellate division shall issue new specific deadlines by which the appellant's brief, the answering brief and any reply brief must be filed and served.

FCA § 354.2. Duties of Counsel or Law Guardian (Attorney for the Child)

1. If the court has entered a dispositional order pursuant to section 352.2, it shall be the duty of the respondent's counsel or [the attorney for the child] to promptly advise such respondent and his parent or other person responsible for his care in writing of his right to appeal to the appropriate appellate division of the supreme court, the time limitations involved, the manner of instituting an appeal and obtaining a transcript of the testimony and the right to apply for leave to appeal as a poor person if he is unable to pay the cost of an appeal. It shall be the further duty of such counsel or [the attorney for the child] to explain to the respondent and his parent or person responsible for his care the procedures for instituting an appeal, the possible reasons upon which an appeal may be based and the nature and possible consequences of the appellate process.

2. It shall also be the duty of such counsel or [the attorney for the child] to ascertain whether the respondent wishes to appeal and, if so, to serve and file the necessary notice of appeal.

3. If the respondent has been permitted to waive the appointment of a [an attorney for the child] pursuant to section two hundred forty-nine-a, it shall be the duty of the court to provide the notice and explanation pursuant to subdivision one and, if the respondent indicates that he wishes to appeal, the clerk of the court shall file and serve the notice of appeal.

FCA § 760. Duties of Counsel or Law Guardian (Attorney for the Child)

1. If the court has entered a dispositional order pursuant to section seven hundred fifty-four it shall be the duty of the respondent's counsel or [the attorney for the child] to promptly advise such respondent and if his parent or other person responsible for his care is not the petitioner, such parent or other person responsible for his care, in writing of his right to appeal to the appropriate appellate division of the supreme court, the time limitations involved, the manner of instituting an appeal and obtaining a transcript of the testimony and the right to apply for leave to appeal as a poor person if he is unable to pay the cost of an appeal. It shall be the further duty of such counsel or [the attorney for the child] to explain to the respondent and if his parent or other person responsible for his care is not the petitioner, such parent or person responsible for his care, the procedures for instituting an appeal, the possible reasons upon which an appeal may be based and the nature and possible consequences of the appellate process.

2. It shall also be the duty of such counsel or [the attorney for the child] to ascertain whether the respondent wishes to appeal and, if so, to serve and file the necessary notice of appeal.

3. If the respondent has been permitted to waive the appointment of a [an attorney for the child] pursuant to section two hundred forty-nine-a, it shall be the duty of the court to provide the notice and explanation pursuant to subdivision one and, if the respondent indicates that he wishes to appeal, the clerk of the court shall file and serve the notice of appeal.

FCA § 1052-b. Duties of Counsel

1. If the court has entered a dispositional order pursuant to section one thousand fifty-two it shall be the duty of the respondent's counsel promptly to advise such respondent in writing of his or her right to appeal to the appropriate appellate division of the supreme court, the time limitations involved, the manner of instituting an appeal and obtaining a transcript of the testimony and the right to apply for leave to appeal as a poor person if the respondent is unable to pay the cost of an appeal. It shall be the further duty of such counsel to explain to the respondent the procedures for instituting an appeal, the possible reasons upon which an appeal may be based and the nature and possible consequences of the appellate process.

2. It also shall be the duty of such counsel to ascertain whether the respondent wishes to appeal and, if so, to serve and file the necessary notice of appeal.

B. Rules of the Appellate Division - Second Department

22 NYCRR § 671.10. Duties of Assigned Counsel in the Supreme Court, Surrogate's Court and the Family Court

(a) Upon the entry of an order in the Supreme Court, Surrogates's Court and Family Court from which an appeal may be taken, it shall be the duty of assigned counsel for the unsuccessful party, immediately after the entry of the order, to give either by mail or personally, written notice to the client advising of the right to appeal or to make application for permission to appeal, and request written instructions as to whether he or she desires to take an appeal or to make such application. Thereafter, if the client gives to counsel timely written notice of his or her desire to

appeal or to make such application, counsel shall promptly serve and file the necessary formal notice of appeal, or make application to this court for permission to appeal. Unless counsel shall have been retained to prosecute the appeal, the notice of appeal may contain the additional statement that it is being served and filed on appellant's behalf pursuant to this rule and that it shall not be deemed to be counsel's appearance as appellant's attorney on the appeal.

(b) In counsel's written notice to the client advising of the right to appeal or to make application for permission to appeal, counsel shall also set forth:

- (1) the applicable time limitations with respect to the taking of the appeal or the making of the application for permission to appeal;
- (2) the manner of instituting the appeal and, if a trial or hearing was held and stenographic minutes taken, the manner of obtaining a typewritten transcript of such minutes;
- (3) the client's right, upon proof of his or her financial inability to retain counsel and to pay the costs and expenses of the appeal, to make application to this court for the assignment of counsel to prosecute the appeal; and, if stenographic minutes were taken, for a direction to the clerk and the stenographer of the trial court that a typewritten transcript of such minutes be furnished without charge to assigned counsel or, if the client prosecutes the appeal *pro se*, to the client; and
- (4) in such notice counsel shall also request the written instructions of his client, and if the client thereafter gives counsel timely written notice of his or her desire to make application for permission to appeal or to apply for the relief provided in paragraph (3), or to make any one or all of these applications, counsel shall proceed promptly to do so.

(c) Counsel shall also advise the client that in those cases where permission to appeal is required, applications for the foregoing relief will be considered only if such permission is granted.

(d) If the assigned counsel represented the successful party in the court in which the order being appealed was entered, such assignment shall remain in effect and counsel shall continue to represent the successful party as the respondent on the appeal until entry of the order determining the appeal and until counsel shall have performed any additional applicable duties imposed upon him or her by these rules, or until counsel shall have been otherwise relieved of his assignment.

Cases of Interest

In *Matter of Gatke v Johnson*, 50 AD3d 798 (2d Dept 2008), the Appellate Division reversed the Family Court's order dated November 29, 2006, which, after a hearing, granted the

father's petition for sole custody of the subject child. The matter was remitted for a new hearing and determination. In its opinion, the Court stated that the attorney for the child on the appeal had raised significant issues regarding developments that had arisen since the date of the order at issue which prevented the Court from determining which custodial arrangement would be in the child's best interests.

In *Greenidge v Henry*, 70 AD3d 946 (2d Dept 2010), the Appellate Division, citing *Gatke v Johnson, supra*, found that significant new developments raised by the attorney for the child (the commencement of a Family Court article 10 child protective proceeding against the mother, the filing of multiple domestic incident reports by both parents, and the lodging of complaints against both parents with the New York State Central Register of Child Abuse and Maltreatment) rendered the record no longer sufficient to determine which custodial arrangement was in the child's best interests. Accordingly, the matter was remitted for a new hearing and custody determination.

Conversely, in *Stefas v Sierra*, 90 AD3d 762 (2d Dept 2011), the Appellate Division did not address events that occurred outside the record on appeal which were referred to by the attorney for the children in a section of her brief, as there was no indication that the record before the Court was insufficient for determining the mother's fitness and right to custody.

THE APPELLATE DIVISION, THIRD JUDICIAL DEPARTMENT
in conjunction with
THE OFFICE OF COURT ADMINISTRATION
ATTORNEY FOR CHILD CONTRACTS

Present

**"HOME NOT SO SWEET" HOME:
DOMESTIC VIOLENCE DYNAMICS AND CHILDREN**

Thursday, October 9, 2014
Desmond Hotel - Albany, NY

- 9:00 a.m. Registration and Refreshments
- 9:30 a.m. Introductions
Rachel Hahn, Esq.
Coordinator, OCA Attorney for the Child Contracts
White Plains, New York
- 9:40 a.m. Coercive Control and Implications for Parenting and Post-Separation Abuse
Chitra Raghavan, Ph.D.
Professor of Psychology & Program Director BA/MA Program
John Jay College of Criminal Justice
New York, New York
- 11:15 p.m. Break
- 11:30 p.m. Coercive Control (continued)
- 12:15 p.m. Violence in the Home: A Child's Perspective
Mark Wynn
Domestic and Sexual Violence Training Consultant
Mark Wynn Consulting
Nashville, Tennessee
- 1:00 p.m. Violence in the Home: Effective Intervention Methods
Mark Wynn
- 1:30 p.m. Conclusion

The Appellate Division, Third Judicial Department, has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of continuing legal education in the State of New York. This program has been approved for a total of four (4.0) credit hours, of which one-and-a-half (1.5) credit hours can be applied to the profession practice requirement (family law), two (2.0) credit hours can be applied to the skills requirement, and one-half (.5) credit hour can be applied towards the ethics and professionalism requirement. This program is suitable for experienced and newly-admitted attorneys.

State of New York
Supreme Court Appellate Division
Second Judicial Department

and

Attorneys for Children Advisory Committee
North Judicial District

and

The New York State Office of Court Administration
Attorney for the Child Contracts

Present

The Annual Fall Seminar For Attorneys

Date: Friday, October 18, 2013
Time: 9:00a.m. - 3:30p.m.* Registration at 9:00a.m.
Place: Westchester County Supreme Court
Auditorium and Juror's Lounge, 1st Floor Lobby
111 Dr. Martin Luther King Jr. Blvd.
White Plains, New York 10601

- 9:30 AM - 11:00 AM** **Caselaw and Legislative Update**
Gary Solomon, Esq.
The Legal Aid Society, Juvenile Rights Practice
- 11:00 AM - 12:30 PM** **Advocacy for Children in Domestic Violence Cases: Effective
Representation of a Child's Position**
Loretta Frederick, Esq.
Battered Women's Justice Project
Rhonda Weir, Esq.
Attorney, Private Practice
- 1:30 PM - 2:30 PM** **Interviewing Children in the Midst of High Conflict Cases**
Elizabeth Schockmel, Psy.D.
Clinical and Forensic Psychologist
- 2:30 PM - 3:30 PM** **Dealing with Substance and Alcohol Abuse**
Raymond Griffin, Ph.D.
Private Practice

This is a Mandatory Training

CLE Credit: 3.5 hours, Professional Practice; 1 hour, Skills; .5 hours Ethics

The Appellate Division, Second Department has been certified by the New York State Continuing Legal Education Board as an accredited provider of continuing legal education in the State of New York. This course is appropriate for all attorneys.

THE APPELLATE DIVISION, FOURTH DEPARTMENT
in conjunction with the
THE OFFICE OF COURT ADMINISTRATION
ATTORNEY FOR THE CHILD CONTRACTS
present:

THE BATTERER

October 2, 2012
RIT Inn & Conference Center
Rochester, NY

- 8:30 a.m. REGISTRATION AND MATERIALS DISTRIBUTION
- 9:00 a.m. WELCOME
Rachel Hahn, Esq.
Coordinator, OCA Attorney for the Child Contracts
- 9:10 a.m. *The Impact of Domestic Violence on Family Dynamics*
Lundy Bancroft
Family Issues Specialist
- 10:30 a.m. Break
- 10:45 a.m. *Post-Separation Parenting: Evaluating Batterers' Behavior and Assessing Parenting Plans*
Lundy Bancroft
- 12:00 n. *Ethical Considerations for Attorneys for Children in the Domestic Violence Context*
Lundy Bancroft
Tanya J. Conley, Esq.
Director of Training and Appeals
Legal Aid Society of Rochester
- 12:50 p.m. Conclusion

The Appellate Division, Fourth Department has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of continuing legal education in the State of New York from March 2, 2011 to March 1, 2014. This program has been approved for a total of four (4.0) credit hours, of which three (3.0) hours can be applied toward the skills requirement, and one (1.0) credit can be applied toward the ethics and professionalism requirement. This program is suitable for experienced and newly-admitted attorneys.

State of New York
Supreme Court Appellate Division
Second Judicial Department
and
Attorneys Children Advocacy Committee
North Judicial District
Kathie E. Davidson, Chair
and
The New York State Office of Court Administration
Attorneys for Child Contracts
Present
The Annual Fall Seminar For
Attorneys Representing Children

Date: Friday, October 12, 2012
Time: 9:00a.m. - 3:00p.m.* Registration at 8:30a.m.
Place: Westchester County Supreme Court
Auditorium and Juror's Lounge, Floor Lobby
111 Dr. Martin Luther King Jr. Blvd.
White Plains, New York 10601

9:00 AM - 11:00 AM **Raising Awareness and Responding to Trauma**

Laura van Dernoot Lipsky, MSW
Director, The Trauma Stewardship Institute

11:00 AM - 12:30 PM **Child Welfare Case Law Update**

Margaret A. Burt, Esq.
Attorney, Private Practice

1:30 PM - 3:30 PM **Indian Children In Family Courts:
Understanding and Applying ICWA**

Margaret A. Burt, Esq.
Attorney, Private Practice

Marguerite A. Smith, Esq.
Attorney, Shinnecock Indian Nation

This is a Mandatory Training
CLE Credit: 4 hours, Professional Practice; 1.5 hours, Skills

The Appellate Division, Second Department has been certified by the New York State Continuing Legal Education Board as an accredited provider of continuing legal education in the State of New York. This course is appropriate for all attorneys.

THE APPELLATE DIVISION, FOURTH DEPARTMENT
in conjunction with the
THE OFFICE OF COURT ADMINISTRATION
ATTORNEY FOR THE CHILD CONTRACTS
present:

ASSESSING RISK IN THE CONTEXT OF DOMESTIC VIOLENCE

October 21, 2013
RIT Inn & Conference Center
Rochester, NY

- 9:00 a.m. REGISTRATION AND MATERIALS DISTRIBUTION
- 9:30 a.m. WELCOME
Rachel Hahn, Esq.
Coordinator, OCA Attorney for the Child Contracts
- 9:40 a.m. *Child Custody & Access: Understanding the Impact of Domestic Violence
When Advocating for Children*
Claire Crooks, Ph.D., C.Psych.
Independent Research Scientist at Centre for Addiction and Mental
Health, London, Ontario, Canada
- 10:30 a.m. *Violence Prevention - Interrupting the Cycle of Violence*
Claire Crooks, Ph.D., C.Psych.
Independent Research Scientist at Centre for Addiction and Mental
Health, London, Ontario, Canada
- 12:00 p.m. Snack Break
- 12:15 p.m. *Adolescent Dating Violence & Risk Behavior*
Claire Crooks, Ph.D., C.Psych.
Independent Research Scientist at Centre for Addiction and Mental
Health, London, Ontario, Canada
- 1:30 p.m. Conclusion

The Appellate Division, Fourth Department has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of continuing legal education in the State of New York from March 2, 2011 to March 1, 2014. This program has been approved for a total of four (4.0) credit hours, of which one-and-a-half (1.5) hours can be applied toward the skills requirement, two (2.0) hours can be applied to the professional practice requirement (family law), and one-half (.5) hour credit can be applied toward the ethics and professionalism requirement. This program is suitable for experienced and newly-admitted attorneys.

THE NEW YORK STATE OFFICE OF COURT ADMINISTRATION
and
THE NEW YORK STATE APPELLATE DIVISIONS
present

ADVOCATING FOR CHILDREN IN CASES INVOLVING DOMESTIC VIOLENCE

Thursday, January 14, 2010

Ramada Hotel and Conference Center, Buffalo, New York

- 9:00 a.m. Registration
- 9:30 a.m. Welcome
- 9:40 a.m. Understanding Domestic Violence
KATHRYN FORD, LMSW
Senior Domestic Violence Program Associate
Center for Court Innovation
- 10:30 a.m. Break
- 10:40 a.m. The Impact of Domestic Violence on Children and Families
EVAN STARK, PhD, MA, MSW
Chair, Department of Urban Health Administration, Rutgers University
Professor & MPH Program Director, Rutgers University
- 12:20 p.m. Lunch
- 1:20 p.m. Interviewing Children in the Context of Domestic Violence
FRANK ALABISO, PhD
Suburban Psychiatric Associates, LLP
- 2:10 p.m. Break
- 2:20 p.m. Panel Discussion: Ethical Issues Confronting the Attorney for the Child
In Cases Involving Domestic Violence
Moderator - ABENA DARKEH, ESQ.
Assistant Deputy Counsel, NYS Office of Court Administration,
Office of the Chief of Policy and Planning
HON. DEBORAH A. HAENDIGES
Erie County Supreme Court
TANYA CONLEY, ESQ.
The Legal Aid Society of Rochester
JEFFREY HARRINGTON, ESQ.
Attorney in Private Practice
LAURA GRUBE, LCSW-R
Child & Family Services Haven House
KEVIN GIBBONS, ESQ.
Gibbons & Stadler, PC
- 4:00 p.m. Conclusion

THE NEW YORK STATE OFFICE OF COURT ADMINISTRATION
and
THE NEW YORK STATE APPELLATE DIVISIONS
present

ADVOCATING FOR CHILDREN IN CASES INVOLVING DOMESTIC VIOLENCE

Friday, January 15, 2010

Genesee Grande Hotel, Syracuse, New York

- 9:00 a.m. Registration
- 9:30 a.m. Welcome
- 9:40 a.m. Understanding Domestic Violence
KATHRYN FORD, LMSW
Senior Domestic Violence Program Associate
Center for Court Innovation
- 10:30 a.m. Break
- 10:40 a.m. The Impact of Domestic Violence on Children and Families
EVAN STARK, PhD, MA, MSW
Chair, Department of Urban Health Admin., Rutgers University
Professor & MPH Program Director, Rutgers University
- 12:20 p.m. Lunch
- 1:20 p.m. Interviewing Children in the Context of Domestic Violence
FRANK ALABISO, PhD
Suburban Psychiatric Associates, LLP
- 2:10 p.m. Break
- 2:20 p.m. Panel Discussion: Ethical Issues Confronting the Attorney for the Child
in Cases Involving Domestic Violence
Moderator - ABENA DARKEH, ESQ.
Assistant Deputy Counsel, NYS Office of Court Administration
Office of the Chief of Policy and Planning
HON. JOHN C. ROWLEY
Multi-Bench Judge, Tompkins County
DIANE WITHIAM, ESQ.
Citizens Concerned for Children
KAREN DOCTER, ESQ.
Attorney in Private Practice
MARY C. JOHN, ESQ.
Frank H. Hiscock Legal Aid Society
MARC WALDAUER ESQ.
Attorney in Private Practice
- 4:00 p.m. Conclusion

THE NEW YORK STATE OFFICE OF COURT ADMINISTRATION
and
THE NEW YORK STATE APPELLATE DIVISIONS
present

ADVOCATING FOR CHILDREN IN CASES INVOLVING DOMESTIC VIOLENCE

Thursday, January 21, 2010

New York State Judicial Institute, White Plains, New York

- | | |
|------------|---|
| 9:00 a.m. | Registration |
| 9:30 a.m. | Welcome |
| 9:40 a.m. | Understanding Domestic Violence
DAWN M. HUGHES, PhD, ABPP
Clinical and Forensic Psychologist |
| 10:30 a.m. | Break |
| 10:40 a.m. | The Impact of Domestic Violence on Children and Families
JEFFREY EDLESON, PhD
Director, Minnesota Center Against Violence and Abuse
Professor, University of Minnesota School of Social Work |
| 12:20 p.m. | Lunch |
| 1:20 p.m. | Interviewing Children in the Context of Domestic Violence
ELIZABETH SCHOCKMEL, PsyD
Clinical and Forensic Psychologist |
| 2:10 p.m. | Break |
| 2:20 p.m. | Panel Discussion: Ethical Issues Confronting the Attorney for the Child
In Cases Involving Domestic Violence
Moderator - ABENA DARKEH, ESQ.
Assistant Deputy Counsel, NYS Office of Court Administration,
Office of the Chief of Policy and Planning
HON. PATRICIA HENRY
Kings County Integrated Domestic Violence Court
KAREN RILEY, ESQ.
Children's Rights Society
JO ANN DOUGLAS, ESQ.
Attorney in Private Practice
PAMELA HOWARD, ESQ.
My Sisters' Place
NICOLE BARNUM, ESQ.
Barnum & Reyes, P.C. |
| 4:00 p.m. | Conclusion |

THE NEW YORK STATE OFFICE OF COURT ADMINISTRATION
and
THE NEW YORK STATE APPELLATE DIVISIONS
present

ADVOCATING FOR CHILDREN IN CASES INVOLVING DOMESTIC VIOLENCE

Friday, January 22, 2010

New York County Lawyers' Association, New York, New York

- | | |
|------------|---|
| 9:00 a.m. | Registration |
| 9:30 a.m. | Welcome |
| 9:40 a.m. | Understanding Domestic Violence
DAWN M. HUGHES, PhD, ABPP
Clinical and Forensic Psychologist |
| 10:00 a.m. | Break |
| 10:40 a.m. | The Impact of Domestic Violence on Children and Families
JEFFREY EDLESON, PhD
Director, Minnesota Center Against Violence and Abuse
Professor, University of Minnesota School of Social Work |
| 12:20 p.m. | Lunch |
| 1:20 p.m. | Interviewing Children in the Context of Domestic Violence
ELIZABETH SCHOCKMEL, PsyD
Clinical and Forensic Psychologist |
| 2:10 p.m. | Break |
| 2:20 p.m. | Panel Discussion: Ethical Issues Confronting the Attorney for the Child
In Cases Involving Domestic Violence
Moderator - ABENA DARKEH, ESQ.
Assistant Deputy Counsel, NYS Office of Court Administration,
Office of the Chief of Policy and Planning
HON. FERNANDO CAMACHO
Administrative Judge for Criminal Matters, Eleventh Judicial District
TAMARA STECKLER, ESQ.
New York City Legal Aid Society, Juvenile Rights Practice
JO ANN DOUGLAS, ESQ.
Attorney in Private Practice
ANNA MARIA DIAMANTI, ESQ.
South Brooklyn Legal Services
NICOLE BARNUM, ESQ.
Barnum & Reyes, P.C. |
| 4:00 p.m. | Conclusion |

AGENDA
THE OFFICE OF COURT ADMINISTRATION
ATTORNEY FOR THE CHILD CONTRACTS
& CHILD WELFARE COURT IMPROVEMENT PROJECT
IN COLLABORATION WITH
The Children's Law Center
Present
ATTORNEY FOR THE CHILD UPDATE

May 15 & 16, 2014
EMBASSY SUITES
SYRACUSE, NEW YORK

DAY ONE

10:00 A.M. – 10:50 A.M.	REGISTRATION AND BREAKFAST
10:50 A.M. – 11:00 A.M.	WELCOME <i>Rachel Hahn, Esq.</i> Coordinator, OCA Attorney for the Child Contracts
11:00 A.M. – 12:30 noon	EDUCATIONAL STABILITY FOR STUDENTS IN OUT-OF-HOME CARE <i>Jennifer Pringle, Esq.</i> NYS-TEACHS
12:30 P.M. – 1:30 P.M.	LUNCH
1:30 P.M. – 2:30 P.M.	SOCIAL MEDIA EVIDENCE: DISCOVERY & ADMISSIBILITY <i>Michael Hutter</i> Professor of Law Albany Law School
2:30 P.M. - 3:45 P.M.	TRAUMA INFORMED REPRESENTATION OF CHILD CLIENTS <i>Michael DeFalco, Psy.D</i> Director of Military and Integrative Services Bridge Back to Life Center, Inc.
3:45 P.M. – 4:00 P.M.	BREAK
4:00 P.M. – 5:15 P.M.	ADOLESCENT BRAIN DEVELOPMENT : ETHICAL ISSUES IN JUVENILE DELINQUENCY CASES <i>Jacqueline Deane, Esq.</i> Director of Delinquency Training and Practice Legal Aid Society, Juvenile Rights Practice Adjunct Professor of Clinical Law New York University School of Law

5:30 P.M. – 7:15 P.M. RECEPTION

7:15 P.M. – 9:00 P.M. DINNER

DAY TWO

8:00 A.M. – 9:00 A.M. BREAKFAST

9:00 A.M. – 10:15 A.M. ALTERNATIVE DISPUTE RESOLUTION IN FAMILY COURT PROCEEDINGS

Dan Weitz, Esq.

Deputy Director of Professional and Court Services
Coordinator, Alternative Dispute Resolution

10:15 A.M. – 10:30 A.M. BREAK

10:30 A.M. – 12:00 NOON EVIDENTIARY & PROCEDURAL HOT TOPICS
IN CHILD WELFARE

Margaret Burt, Esq.

Attorney in private practice, specializing in child welfare

12:00 NOON BOX LUNCH

The Children's Law Center has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of continuing legal education in the State of New York from January 1, 2014 to December 31, 2016. This program has been approved for a total of eight and a half (8.5) credit hours, of which three and a half (3.5) credit hours can be applied to the professional practice requirement; three and a half (3.5) credit hours can be applied to the skills requirement and one and a half (1.5) credit hours can be applied to the ethics and professionalism requirement. This program is suitable for experienced and newly admitted attorneys.

AGENDA
THE OFFICE OF COURT ADMINISTRATION
ATTORNEY FOR THE CHILD CONTRACTS
& CHILD WELFARE COURT IMPROVEMENT PROJECT
IN COLLABORATION WITH
THE APPELLATE DIVISION, FOURTH DEPARTMENT
Present
ATTORNEY FOR THE CHILD UPDATE

JUNE 4TH & 5TH, 2013
EMBASSY SUITES
SYRACUSE, NEW YORK

DAY ONE (CHILD WELFARE)

10:00 A.M. – 10:50 A.M.	REGISTRATION AND BREAKFAST
10:50 A.M. – 11:00 A.M.	WELCOME <i>Rachel Hahn, Esq.</i> Coordinator, OCA Attorney for the Child Contracts
11:00 A.M. – 12:40 noon	PSYCHOTROPIC MEDICATION – USE AND ABUSE FOR CHILDREN IN FOSTER CARE <i>Martin Irwin, MD</i> Westchester, New York
12:40 P.M. – 1:30 P.M.	LUNCH
1:30 P.M. – 2:30 P.M.	ADVOCATING FOR INFANTS AND YOUNG CHILDREN <i>Christine Kiesel, Esq.</i> Coordinator Child Welfare Court Improvement Project
2:30 P.M. - 3:45 P.M.	HEALTH CARE AND CHILDREN IN FOSTER CARE <i>Steven D. Blatt, MD</i> Director, Division of General Pediatrics Medical Director, University Pediatrics and Adolescent Center Upstate Medical University
3:45 P.M. – 4:00 P.M.	BREAK
4:00 P.M. – 5:15 P.M.	CHILD WELFARE CASELAW UPDATE <i>Margaret Burt, Esq.</i> Attorney in private practice, specializing in child welfare
5:30 P.M. – 7:15 P.M.	RECEPTION
7:15 P.M. – 9:00 P.M.	DINNER

DAY TWO

8:00 A.M. – 9:00 A.M.	BREAKFAST
9:00 A.M. – 10:00 A.M.	APPELLATE PRACTICE & ETHICAL CONSIDERATIONS FOR THE ATTORNEY FOR THE CHILD Honorable Edward O. Spain Appellate Division Justice, Third Department Tanya J. Conley, Esq. Supervising Attorney, Appellate Litigation and Training Legal Aid Society of Rochester, Juvenile Justice Division
10:00 A.M. – 12:00 NOON	IMMIGRATION ISSUES FOR CHILDREN IN FAMILY COURT
(11:00 A.M. – 11:15 A.M.) <i>BREAK</i>	Julie E. Dinnerstein, Esq. Co-Director, Immigration Intervention Project Sanctuary for Families
12:00 NOON	BOX LUNCH

The Appellate Division, Fourth Department has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of continuing legal education in the State of New York from March 2, 2011 to March 1, 2014. This program has been approved for a total of nine and a half (9.5) credit hours, of which four (4) credit hours can be applied to the professional practice requirement; four and a half (4.5) credit hours can be applied to the skills requirement and one (1) credit hour can be applied to the ethics and professionalism requirement. This program is suitable for experienced and newly admitted attorneys.

AGENDA
THE OFFICE OF COURT ADMINISTRATION
ATTORNEY FOR THE CHILD CONTRACTS
& CHILD WELFARE COURT IMPROVEMENT PROJECT
IN COLLABORATION WITH
THE APPELLATE DIVISION, FOURTH DEPARTMENT

Present
ATTORNEY FOR THE CHILD UPDATE

JUNE 11th, 2012
THE DESMOND HOTEL AND CONFERENCE CENTER
ALBANY, NEW YORK

- | | |
|-----------------------|---|
| 1:00 P.M. – 1:50 P.M. | REGISTRATION AND SNACK |
| 1:50 P.M. – 2:00 P.M. | WELCOME
Rachel Hahn, Esq.
Coordinator, OCA Attorney for the Child Contracts |
| 2:00 P.M. – 3:15 P.M. | DOMESTIC VIOLENCE AND TECHNOLOGY
Ian Harris, Esq.
Day One |
| 3:15 P.M. – 3:30 P.M. | BREAK |
| 3:30 P.M. – 5:15 P.M. | COMPLEX CUSTODY ISSUES AND ETHICAL
IMPLICATIONS FOR THE ATTORNEY FOR THE CHILD
Michele A. Brown, Esq.
Chief Attorney for the Child
Children’s Legal Center

Jeffrey P. Wittmann, Ph.D
Forensic Psychologist and Trial Consultant
The Center for Forensic Psychology |
| 7:00 P.M. – 9:00 P.M. | DINNER & TECHNOLOGY PRESENTATION |

The Appellate Division, Fourth Department has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of continuing legal education in the State of New York from March 2, 2011 to March 1, 2014. This program has been approved for a total of (3.5) credit hours, of which one and one-half (1.5) credit hours can be applied toward the skills requirement, one-half (.5) credit hour can be applied toward the professional practice (family law) requirement, and one and one-half (1.5) credit hours can be applied toward the ethics and professionalism requirement. This program is suitable for experienced or newly admitted attorneys.

AGENDA
THE OFFICE OF COURT ADMINISTRATION
ATTORNEY FOR THE CHILD CONTRACTS
& CHILD WELFARE COURT IMPROVEMENT PROJECT
IN COLLABORATION WITH
THE APPELLATE DIVISION, FOURTH DEPARTMENT
Present
ATTORNEY FOR THE CHILD UPDATE

JUNE 7TH & 8TH, 2011
EMBASSY SUITES
SYRACUSE, NEW YORK

DAY ONE (CHILD WELFARE)

10:00 A.M. – 10:50 A.M.	REGISTRATION AND BREAKFAST
10:50 A.M. – 11:00 A.M.	WELCOME Rachel Hahn, Esq. Coordinator, OCA Attorney for the Child Contracts
11:00 A.M. – 12:00 noon	AGING OUT OF FOSTER CARE Erika Leveillee, MA Youth in Progress Coordinator Adolescent Services Resource Network University of Albany
12:00 noon – 1:00 P.M.	EDUCATION LAW Judith Gerber, Esq. Staff Attorney Legal Aid Bureau of Buffalo, Inc.
1:00 P.M. – 2:00 P.M.	LUNCH
2:00 P.M. – 3:40 P.M.	DISPROPORTIONATE MINORITY REPRESENTATION Khatib Waheed, MEd Senior Fellow, Center for the Study of Social Policy Toni Lang, PhD Deputy Director Permanent Judicial Commission on Justice for Children
3:40 P.M. – 3:50 P.M.	BREAK
3:50 P.M. – 5:05 P.M.	RECENT DEVELOPMENTS IN CHILD WELFARE Margaret Burt, Esq. Attorney in private practice, specializing in child welfare
5:30 P.M. – 7:15 P.M.	RECEPTION
7:15 P.M. – 9:00 P.M.	DINNER

DAY TWO

8:00 A.M. – 9:00 A.M.	BREAKFAST
9:00 A.M. – 10:00 A.M.	THE DISPOSITION PHASE OF DELINQUENCY CASES <i>Stephen Weisbeck, Esq.</i> Director, Juvenile Justice Division Legal Aid Society of Rochester
10:00 A.M. – 11:00 A.M.	TRAFFICKING & PROSTITUTION <i>Elizabeth Fildes</i> Erie County Sheriff, Deputy
11:00 A.M. – 11:15 A.M.	BREAK
11:15 A.M. – 12:45 P.M.	ETHICS AND CONFLICT ISSUES <i>Gary Solomon, Esq.</i> Director of Legal Support The Legal Aid Society (NYC), Juvenile Rights Practice
12:45 P.M.	BOX LUNCH

The Appellate Division, Fourth Department has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of continuing legal education in the State of New York from March 2, 2011 to March 1, 2014. This program has been approved for a total of nine (9) credit hours, of which three and one-half (3.5) hours can be applied toward the skills requirement, three (3) hours can be applied to the professionalism and ethics requirement, and two and a one-half (2.5) hours can be applied toward professional practice (family law) requirement. This program is suitable for experienced and newly admitted attorneys.

THE OFFICE OF COURT ADMINISTRATION
IN CONJUNCTION WITH
THE APPELLATE DIVISION, FOURTH DEPARTMENT
Present
ATTORNEY FOR THE CHILD UPDATE
MAY 20, 2010
ROCHESTER MARRIOTT AIRPORT HOTEL
ROCHESTER, NEW YORK

9:00 A.M. – 9:55 A.M.	REGISTRATION AND BREAKFAST
9:55 A.M. – 10:00 A.M.	WELCOME <i>Rachel Hahn, Esq.</i> Coordinator, OCA Attorney for the Child Contracts
10:00 A.M. – 10:50 A.M.	BEST PRACTICES IN REPRESENTING LGBTQ YOUTH <i>Mary Beth Feindt, Esq.</i> Attorney in Private Practice
10:50 A.M. – 11:50 A.M. (FOR ATTORNEYS)	JUVENILE DELINQUENCY MOTION PRACTICE <i>Paul Sartori, Esq.</i> Directing Attorney Sullivan Trail Legal Society, Inc.
(FOR NON-ATTORNEYS)	SOCIAL WORKER ROUNDTABLES
11:50 P.M. – 12:00 noon	BREAK
12:00 noon – 1:00 P.M.	IN CAMERA INTERVIEWS: ETHICAL CONSIDERATIONS <i>Hon. Sharon S. Townsend</i> Supreme Court Justice, 8 th Judicial District Vice Dean for Family and Matrimonial Law, New York State Judicial Institute <i>Gerald Stern, Esq.</i> Special Counsel New York State Judicial Institute
1:00 P.M. – 1:45 P.M.	LUNCH
1:45 P.M. – 3:30 P.M.	CASELAW UPDATE <i>Mark Schlechter, Esq.</i> Principal Court Attorney Steuben County
3:30 P.M. – 3:40 P.M. 3:40 P.M. – 4:30 P.M.	BREAK COMPASSION FATIGUE & VICARIOUS TRAUMA <i>Aimee Neri, LMSW</i> Liaison, 8 th Judicial District Child Welfare Court Improvement Project

Domestic Violence, Developing Brains, and the Lifespan New Knowledge from Neuroscience

By Lynn Hecht Schafran

The author suggests that, before reading this article, you go to YouTube.com and watch *First Impressions: Exposure to Violence and a Child's Developing Brain* (15 minutes) featuring Dr. Bruce Perry, senior fellow of the ChildTrauma Academy in Houston, Texas,¹ and Dr. Linda Chamberlain, founding director, Alaska Family Violence Prevention Project,² available at <http://www.youtube.com/watch?v=brVOYtNMmKk>.³

The New England Journal of Medicine recently published an article titled "Silent Victims—An Epidemic of Childhood Exposure to Domestic Violence." It called on healthcare providers to understand the prevalence and neurobiological consequences of children's exposure to domestic violence and take action to mitigate it.

Childhood IPV [Intimate Partner Violence] exposure has been repeatedly linked to higher rates of myriad physical health problems in children. Altered neuroendocrine stress response may be one important mechanism accounting for this correlation. Highly stressful environmental exposure, such as exposure to IPV, causes children to repeatedly mount the "fight or flight" reaction. Although this response may be adaptive in the short term, repeated activation . . . results in pathologic changes in multiple systems over time; some

experts refer to this effect as the biologic embedding of stress.⁴

The *First Impressions: Exposure to Violence and a Child's Developing Brain* video starts with Dr. Perry explaining that contrary to what was long believed, neuroscience shows that the brains of babies and young children are sponges that soak up and are shaped by everything in their environment, including the harm of exposure to domestic violence. Dr. Linda Chamberlain, founding director of the Alaska Family Violence Prevention Project, explains the evolution of her understanding that even babies and young children are impacted by exposure to domestic violence and how that impact is experienced and expressed by children of different ages. "The Enduring Effects of Abuse and Related Adverse Experiences in Childhood: A Convergence of Evidence from Neurobiology and Epidemiology" is an article by neuroscientists, pediatricians, physicians, and public health experts who assessed the findings of the long-running Adverse Childhood Experiences (ACE) study in the context of the new knowledge from neuroscience. The ACE questionnaire includes questions about childhood exposure to domestic violence and adult perpetration. After reviewing the more than 17,000 responses from the mostly white, well-educated sample, they wrote:

[T]he detrimental effects of



traumatic stress on developing neural networks and on the neuroendocrine systems that regulate them have until recently remained hidden even to the eyes of most neuroscientists. However, the information and data that we present herein suggest that this veiled cascade of events represents a common pathway to a variety of important long-term behavioral, health, and social problems.

The convergence of evidence from neurobiology and epidemiology calls for an integrated perspective on the origins of health and social problems through the lifespan.⁵



This evidence leaves no doubt that when a nonabusing parent seeks help from the courts to protect a child from exposure to domestic violence, judges' decisions can literally shape the child's brain and impact the child's mental and physical health, learning capacity, and behavior across the child's lifetime.

Defining Domestic Violence

The justice system's efforts to address domestic violence have been hampered by a schema that defines domestic violence as fist-in-the-face physical assault and harm to children as possible only if they see it. But domestic violence has many dimensions that together create an ongoing climate of tension and fear. In A

Judicial Guide to Child Safety in Custody Cases, the National Council of Juvenile and Family Court Judges provides this comprehensive definition:

[Domestic violence is] a pattern of assaultive and coercive behaviors that operate at a variety of levels—physical, psychological, emotional, financial or sexual—that one parent uses against the other parent. The pattern of behaviors is neither impulsive nor “out of control” but is purposeful and instrumental in order to gain compliance or control.⁶

Articles about domestic violence sometimes describe children as “witnesses,” a problematic term for two reasons. First, “witness” implies a passive bystander, whereas children are deeply engaged with everything that happens in their family environment. Second, a child might never see or hear the physical or sexual abuse yet be profoundly harmed by the atmosphere of fear in which he or she lives. The preferred terminology is children “exposed” to domestic violence.

The Social Science Is Confirmed and Explained by the Neuroscience

Social science research amassed over the last few decades documents the many ways exposure to domestic violence undermines children's mental and physical health, social and emotional development, and interpersonal relationships, as well as the fact that it is often intergenerational.⁷ Exposure to domestic violence can lead to behaviors “such as substance abuse, suicide attempts, and depressive disorders.”⁸ A review of the social science literature published just between 1995 and 2006 identified over 1,000 articles and concluded:

At its most basic level, living with the abuse of their mother is to be considered a form of emotional abuse, with negative implications for children's emotional and mental health and future relationships. . . . Growing up in an abusive home⁹ can critically jeopardize the developmental

progress and personal ability of children, the cumulative effect of which may be carried into adulthood and can contribute significantly to the cycle of adversity and violence. Exposure to domestic violence may have a varied impact at different stages with early and prolonged exposure potentially creating more severe problems because it affects the subsequent chain of development.¹⁰

The social science and the neuroscience may be thought of as the “what” and the “why.” Social science tells us *what* exposure to domestic violence does to children's development and behavior. Neuroscience tells us *why*.

The Neuroscience

Dr. Bruce Perry, as noted above, is a senior fellow at the ChildTrauma Academy in Houston; Dr. Jack P. Shonkoff is director of the Center for the Developing Child at Harvard University; and Dr. Edward Tronick is director of the Child Development Unit at Harvard. Many of their publications on the neuroscience of developing brains are intended for nonscientists in the hope that this new knowledge will find its way into public policy, the legal system, education, and public health, to the benefit of the individual child and society as a whole. This summary is drawn from several of their publications and videos, all available online.¹¹

In infancy and young childhood, the



Lynn Hecht Schafran is an attorney and director of the National Judicial Education Program, a project of Legal Momentum in cooperation with

the National Association of Women Judges. She can be reached at lschafran@legalmomentum.org.

human brain is extremely plastic, growing new neurons and making synaptic connections in response to sensory, perceptual, and affective experiences. Infants' experiences—most importantly, their relationship with their primary caregiver—literally shape the architecture of their brains.

Developing brains are acutely sensitive to stress and to the internal state of the

to memory deficits, as seen in children and adults with post-traumatic stress disorder (PTSD). The work of the brain is carried out by circuits created by synaptic connections. When the levels of cortisol and other stress hormones rise and remain elevated for days or months at a time, these hormones “poison” the circuits developing in the brain at that time, with lifetime consequences. If the circuit affected is one that

startle response, serious sleep disorders, anxiety, hyperactivity, conduct disorder, attention deficit and hyperactivity disorder (ADHD), and PTSD. The fact that children raised in an environment of persistent exposure to domestic violence are more likely to be violent themselves as children and adults is likely linked to their being in constant fight-or-flight mode and the cognitive distortions their fear produces. Everything—even eye contact or a shoulder tap—is perceived as threatening and elicits impulsive, violent reactions.

Dr. Perry explains that living in an alarm state has critical implications for children's ability to learn:



The most beneficial action a court can take for a child exposed to domestic violence is to end the exposure and support the protective parent.

When a child is in a persisting state of low-level fear that results from exposure to violence, the primary areas of the brain that are processing information are different from those in a child from a safe environment. The calm child may sit in the same classroom next to the child in an alarm state, both hearing the same lecture by the teacher. Even if they have identical IQs, the child that is calm can focus on the words of the teacher and, using neocortex, engage in abstract cognition. The child in an alarm state will be less efficient at processing and storing the verbal information the teacher is providing.¹⁴

caregiver upon whom the child depends. Even babies experience the fight-or-flight response and can dissociate or stage a mental retreat in the face of an acute or persistent threat. In a safe environment where the child has a nurturing relationship with a caregiver, moderate stress produces resilience. Some stress is normal and healthy for brain development. Children need to learn to deal with everyday stress. But in an unpredictable, tension-filled, violent environment where the stress is inescapable, it becomes toxic, unleashing a storm of neurochemicals that result in “embedded stress.”¹² Children learn to become fearful through this “fear conditioning,” which is strongly connected to anxiety disorders across the lifespan.

Lundy Bancroft, an expert on batterers as parents, writes that “[the] abuser creates a pervasive atmosphere of crisis in his home.”¹³ Children persistently exposed to domestic violence live in an ongoing “alarm” state, with powerful stress hormones, particularly cortisol, repeatedly priming them to flee or fight. This alarm state has many negative consequences for brain development. The hippocampus is critical for learning and memory. Toxic stress shrinks this area of the brain, leading

would otherwise be involved in building trust in a relationship, for example, absent an effective intervention that circuit is disrupted for life.

While some children exposed to domestic violence are trapped in a fight-or-flight alarm state, others—especially infants and young children who can neither fight nor flee—dissociate, sometimes called the defeat response. They turn inward, go somewhere safe in their imagination, feel as if they are observing rather than experiencing the situation from which escape is impossible. Like adults, for most children the response to an extreme stress—when neither fight nor flight is possible—may be to turn to dissociation.

Children subjected to toxic stress often display symptoms linked to the neurobiology of their major coping adaptation. The more prolonged the stressor, the greater the likelihood of long-term symptoms over the lifespan. The neurochemical system of the dissociating child predisposes to somatic complaints, withdrawal, helplessness, dependence, anxiety disorders, and major depression. The neurochemical system of the fight-or-flight child is predisposed to symptoms related to persistent hyperarousal, such as increased

The resulting failure to learn has consequences across the lifespan.

What Can a Judge Do for Children Exposed to Domestic Violence?

Children's healthy brain development is supported by a nurturing relationship with one or more adults, especially the child's primary caregiver, usually the mother. The most important thing a judge can do to protect children exposed to domestic violence and help them heal is to end their exposure and support the child's relationship with the nonabusing parent.

The critical importance of the child's connection to the nurturing parent is dramatically illustrated in a DVD titled *Helping Babies from the Bench: Using the*

Science of Early Childhood Development in Court,¹⁵ created by Florida Judge Cindy Lederman, a pioneer in using neuroscience to improve children's lives. Judge Lederman's DVD presents the neuroscience of the developing brain and the operations of her court and related agencies. Judges find that a segment of the DVD is helpful in understanding why it is vital to support and protect the bond between a child and his or her nurturing parent. It is the "Still Face Experiment" in which Dr. Tronick films a mother interacting with her year-old baby, which is available on YouTube.¹⁶

The child is in an infant seat while the mother crouches to be on eye level with her. She greets the baby; the baby greets her. The baby points; the mother looks in the direction in which the baby is pointing. They are closely engaged with each other, keeping eye contact, smiling, talking or making responsive noises, coordinating their emotions and intentions.

Then the mother is asked to turn away and turn back with a "still" face. The baby is immediately puzzled and tries to engage her in the kind of reciprocal communication she expects, but the mother remains impassive. Within two minutes the baby's stress is palpable. When she cannot elicit the engaged reaction she expects, she reacts with clearly negative emotions and screechy, beseeching sounds. Then the mother smiles and engages in her usual interactive play with the baby. Instantly the child is happy again.

Implications for the Courts of the New Knowledge from Neuroscience

The new knowledge from neuroscience has significant implications for many kinds of court cases as well as community safety.

Abuse and Neglect

Sometimes mothers seeking an order of protection are themselves charged with "failure to protect" and lose their children to foster care for "allowing" their children to be exposed to domestic violence. Apart from the fact that this outcome has been held unconstitutional,¹⁷ and the irony of charging a protective mother with "failure to protect," from a neuroscience

point of view this outcome is profoundly harmful for children. The most beneficial action a court can take for a child exposed to domestic violence is to end the exposure and support the nonabusive parent's efforts to protect the child. Support includes helping her to secure the services she needs, a safe place to live, and economic independence so that she and the child need not return to the batterer.

In some cases, it is necessary to remove children because the mother does not recognize that the maltreatment, cruelty, and exploitation to which she is being subjected is harmful to her and her children.¹⁸ These are complex cases, but in *Helping Babies from the Bench*, Dr. Shonkoff observes that child welfare agencies blunder in how they use foster care. Repeatedly changing children's placements is intended to prevent children from forming a close attachment with their foster parents. Neuroscience shows that having a close attachment with a nurturing parental figure supports healthy brain development and, in cases like these, can restore brain health.¹⁹

Custody and Visitation

Today every state's custody statute includes domestic violence as a factor to be considered in determining the best interests of the child, the standard for determining custody and visitation. Yet numerous studies over many years document that courts often award custody, joint custody, and unsupervised visitation to abusers.²⁰ What if, instead of saying that children exposed to domestic violence are "at risk," we said children exposed to domestic violence are "at risk of brain damage"? How would that shape perceptions of the "best interests of the child"?

The United States is having a national conversation about whether children should participate in contact sports because neuroscience has shown that concussions bounce the brain against the skull ("brain slosh"), resulting in traumatic brain injury and the long-term consequences that led former players to sue the National Football League.²¹ Similarly, neuroscience now shows us that for children, chronic exposure to domestic violence also results in physical changes

to the brain, impairment of brain function, and consequences for physical and mental health over the lifespan. Toxic stress changes the architecture of the child's brain. It is no less a physical agent of injury than brain slosh.

Custody Evaluators

Many judges rely on custody evaluators when making custody and visitation decisions. Repeated studies find that many evaluators know nothing about domestic violence and insist it does not harm children.²² Neuroscience shows us that exposure to domestic violence harms children's brains at the neuronal level, with lifetime consequences. Judges should require anyone seeking appointment as a custody evaluator to demonstrate knowledge of domestic violence and the relevant social science and neuroscience. Children's lives are at risk.

The Hague Convention

The 1980 Hague Convention on the Civil Aspects of International Child Abduction²³ provides that apart from a few defenses, children abducted from their country of habitual residence should be quickly returned. Many "taking" parents are caregiver mothers²⁴ who assert that they were fleeing domestic violence to secure safety for their children and themselves.²⁵ They invoke the section 13(b) defense, which states that a child need not be returned if there is "a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation." In 2010 the U.S. State Department acknowledged that "many" U.S. courts ignore the scientific evidence documenting that domestic violence against mothers harms children and return children to their mothers' abusers,²⁶ raising "significant issues related to the safety of the child and the accompanying parent."²⁷ Neuroscience helps judges assess "grave risk" in the domestic violence context. The toxic stress that harms developing brains comes from living in a chronic state of tension and fear. The risk for children cannot be measured solely by the gravity of their mother's physical wounds.

Judicial Education

Judicial education programs about domestic violence often include the social science research demonstrating the harm of exposure for children. It is time for these programs to include the new knowledge from neuroscience. Judge Cindy Lederman writes, “Although judges have limited time off the bench, they need to be made aware of relevant child-development research as often as they stay abreast of relevant appellate decisions involving procedure, evidence, and substantive law.”²⁸ With the new knowledge from neuroscience, “[t]he court can be viewed as a unique public-health setting with great potential for changing human behavior.”²⁹

Conclusion

Many neuroscientists focus not only on the individual child, but also on how children’s exposure to domestic violence has created a massive public health problem with serious implications for community safety. The U.S. Attorney General’s National Task Force on Children Exposed to Violence reported that children’s exposure to violence, including domestic violence, is a “national crisis . . . with effects lasting well into adulthood.”³⁰ The social science literature review quoted earlier reported:

[L]ongitudinal studies on pathways to delinquency have shown that young offenders are more likely to have been exposed to domestic violence, compared to their non-exposed counterparts and to become involved in anti-social behavior, violent crime, substance abuse, further delinquency and adult criminality. Finally, there is an association between exposure to domestic violence and peer aggression and bullying.³¹

Now we learn from neuroscience why this is so: Children exposed to repeated violence live in a perpetual “alarm” state, always ready to fight or flee, and carry that childhood adaptation into their adult lives. Dr. Perry offers this lesson for public policy, health policy, and the courts:

Law, policy and practice that are biologically respectful are more effective and enduring. . . . If society ignores the laws of biology, there will inevitably be neurodevelopmental consequences. If, on the other hand, we choose to continue researching, educating and creating problem-solving models, we can shape optimal developmental experiences for our children. The result will be no less than a realization of our potential as a humane society.³²

Human brain development is a long process, and exposure to domestic violence has specific impacts on children of all ages, from infants to teens. Thus, judges need to be mindful that in any case where a child has been exposed to domestic violence or is at risk of exposure in the future, in the words of Dr. Shonkoff, “Judges hold the integrity of a developing child’s brain in their hands.”³³ ■

Endnotes

1. CHILDTRAUMA ACADEMY, <http://childtrauma.org>.
2. Alaska Family Violence Prevention Project, DIV. OF PUB. HEALTH, ALASKA DEP’T OF HEALTH & SOC. SERVS., <http://dhss.alaska.gov/dph/Chronic/Pages/InjuryPrevention/akfvpp/default.aspx>.
3. FIRST IMPRESSIONS: EXPOSURE TO VIOLENCE AND A CHILD’S DEVELOPING BRAIN (Cal. Att’y Gen. 2008).
4. Megan Bair-Merritt et al. *Silent Victims—An Epidemic of Childhood Exposure to Domestic Violence*, N. ENG. J. MED. (Oct. 31, 2013), <http://www.nejm.org/doi/full/10.1056/NEJMp1307643?query=TOC>.
5. Robert F. Anda, Vincent J. Felitti, J. Douglas Bremner, John D. Walker, Charles Whitfield, Bruce D. Perry, Shanta R. Dube & Wayne H. Giles, *The Enduring Effects of Abuse and Related Adverse Experiences in Childhood: A Convergence of Evidence from Neurobiology and Epidemiology*, 256 EUR. ARCHIVES OF PSYCHIATRY & CLINICAL NEUROSCIENCE, no. 3, Apr. 2006, at 174, reprinted in NIH PUBLIC ACCESS 8, [available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3232061/pdf/nihms340170.pdf](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3232061/pdf/nihms340170.pdf).
6. NAT’L COUNCIL OF JUVENILE & FAMILY COURT JUDGES, A JUDICIAL GUIDE TO CHILD

SAFETY IN CUSTODY CASES 8 (2008). With respect to sexual abuse, see NAT’L JUDICIAL EDUC. PROGRAM, INTIMATE PARTNER SEXUAL ABUSE: THE HIDDEN DIMENSION OF DOMESTIC VIOLENCE CASES, web course available at <http://www.njep-ipsacourse.org>, and Lynn Hecht Schafran, *Risk Assessment and Intimate Partner Sexual Abuse: The Hidden Dimension of Domestic Violence*, JUDICATURE, Jan.–Feb. 2010, at 161. The concept of ongoing “coercive control” was developed by Dr. Evan Stark and is central to understanding domestic violence. EVAN STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE (2007); Evan Stark, *Coercive Control*, FATALITY REV. BULL., Spring 2010, at 2, [available at http://www.ncdsv.org/images/NDVFRI_FatalityReviewBulletin_Spring2010.pdf](http://www.ncdsv.org/images/NDVFRI_FatalityReviewBulletin_Spring2010.pdf).

7. E.g., AM. BAR ASS’N CTR. ON CHILDREN & THE LAW, THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN (1994); Spouse Abuse—Statutory Presumption in Child Custody Litigation, H. CON. RES. 172, 101st Cong. (1990) (sense of Congress that every state should create a statutory presumption “[t]hat it is detrimental to the child to be placed in the custody of the abusive parent”).

8. Anda et al., *supra* note 5, at 174, reprinted in NIH PUBLIC ACCESS at 3.

9. With respect to writing about domestic violence generally, phrases such as “abusive relationship” or “abusive home” are inaccurate because they create the invisible perpetrator. Relationships and homes are not abusive; people are.

10. Stephanie Holt, Helen Buckley & Sadhbh Whelan, *The Impact of Exposure to Domestic Violence on Children and Young People: A Review of the Literature*, 32 CHILD ABUSE & NEGLECT 797,799, 802 (2008) (citations omitted). This article provides specifics on the way exposure to domestic violence impacts children of different ages: infants, toddlers, pre-schoolers, school-aged children, and teenagers. A useful resource for this detailed information is a free E-book, published by the London, Ontario, Centre for Children and Families in the Justice System: ALLISON CUNNINGHAM & LINDA BAKER, LITTLE EYES, LITTLE EARS: HOW VIOLENCE AGAINST A MOTHER SHAPES CHILDREN AS THEY GROW (2007), [available at http://www.yellowbrickhouse.org/english/2010/03/17/free-e-book-little-eyes-little-ears](http://www.yellowbrickhouse.org/english/2010/03/17/free-e-book-little-eyes-little-ears).

11. Nat’l Sci. Council on the Developing Child, *Persistent Fear and Anxiety Can Affect Young Children’s Learning and Development* (Working Paper No. 9, 2010), <http://www.developingchild.harvard.edu>; FIRST IMPRESSIONS, *supra* note 3;

HELPING BABIES FROM THE BENCH: USING THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT IN COURT (Zero to Three 2007), <http://www.zerotothree.org/courtteams>; Bruce D. Perry, *Maltreatment and the Developing Child: How Early Childhood Experience Shapes Child and Culture*, MARGARET MCCAIN LECTURE SERIES (Sept. 23, 2004), <http://www.lfcc.on.ca/mccain/perry.pdf>; BRUCE D. PERRY, EFFECTS OF TRAUMATIC EVENTS ON CHILDREN (2003), <http://www.ChildTrauma.org>.

12. Bair-Merritt, *supra* note 4.

13. *Understanding the Batterer in Custody and Visitation Disputes*, LUNDY BANCROFT (1998), <http://www.lundybancroft.com/articles/understanding-the-batterer-in-custody-and-visitation-disputes>.

14. Bruce D. Perry, *The Neurodevelopmental Impact of Violence in Childhood*, in *TEXTBOOK OF CHILD AND ADOLESCENT FORENSIC PSYCHIATRY* (Diane Schetky & Elaine P. Benedik, eds. 2001), http://childtrauma.org/wp-content/uploads/2013/11/Neurodevel_Impact_Perry.pdf.

15. HELPING BABIES FROM THE BENCH, *supra* note 11.

16. STILL FACE EXPERIMENT, *available at* <http://www.youtube.com/watch?v=apzXGEbZht0>.

17. *Nicholson v. Williams*, 787 N.Y.S.2d 196 (Ct. App. 2004); *In re Nicholson*, 181 F. Supp. 2d 182 (E.D.N.Y. 2002).

18. CANDACE L. MAZE, SHARON M. AARON & JUDGE CINDY S. LEDERMAN, DOMESTIC VIOLENCE ADVOCACY IN DEPENDENCY COURT: THE MIAMI-DADE DEPENDENCY COURT INTERVENTION PROGRAM FOR FAMILY VIOLENCE HANDBOOK 7 (2005) (In addition to the domestic violence perpetrated against the mother, estimates of physical and sexual child maltreatment in homes where there is domestic violence are as high as 50 percent.).

19. *Id.* at 10. Best, of course, is for the nurturing adult to be the child's parent. The Miami-Dade Dependency Court Intervention Program "is based on the premise that a battered mother can regain the ability to care for herself and her children if her access to personal and community resources is facilitated at the earliest opportunity and her personal growth is supported."

20. LUNDY BANCROFT & JAY SILVERMAN, *THE BATTERER AS PARENT* (2d ed. 2011); News Release, Leadership Council on Child Abuse & Intimate Partner Violence, *How Many Children Are Court-Ordered into Unsupervised Contact with an Abusive Parent After Divorce?* (Sept. 22, 2008), <http://leadershipcouncil.org/1/med/PR3.html>; Stephanie J. Dallam & Joyanna Silberg, *Myths That Place Children at Risk During*

Custody Disputes, 9 *SEXUAL ASSAULT REP.* 33 (2006), reprinted by the Leadership Council on Child Abuse & Intimate Partner Violence, *available at* http://www.leadershipcouncil.org/1/res/cust_myths.html; Mary Kernic et al., *Children in the Crossfire: Child Custody Determinations Among Couples with a History of Intimate Partner Violence*, 11 *VIOLENCE AGAINST WOMEN* 991 (2005); Dennis P. Saccuzzo & Nancy E. Johnson, *Child Custody, Mediation and Domestic Violence*, 251 *NIJ J.* 21 (2004), <https://www.ncjrs.gov/pdffiles1/jr000251.pdf>.

21. Gregory D. Myer, *Can Animals Help Limit Concussions?*, *N.Y. TIMES* (Jan. 2, 2014), http://www.nytimes.com/2014/01/03/opinion/can-animals-help-limit-concussions.html?_r=0.

22. DANIEL G. SAUNDERS ET AL., CHILD CUSTODY EVALUATORS' BELIEFS ABOUT DOMESTIC ABUSE ALLEGATIONS: THEIR RELATIONSHIP TO EVALUATORS' DEMOGRAPHICS, BACKGROUND, DOMESTIC VIOLENCE KNOWLEDGE, AND CUSTODY-VISITATION RECOMMENDATIONS (2012), <https://www.ncjrs.gov/pdffiles1/nij/grants/238891.pdf>; MICHAEL S. DAVIS ET AL., CUSTODY EVALUATIONS WHEN THERE ARE ALLEGATIONS OF DOMESTIC VIOLENCE: PRACTICES, BELIEFS, AND RECOMMENDATIONS OF PROFESSIONAL EVALUATORS (2011), <https://www.ncjrs.gov/pdffiles1/nij/grants/234465.pdf>; Lynn Hecht Schafran, *Evaluating the Evaluators: Problems with "Outside Neutrals,"* *JUDGES' J.*, Winter 2003, at 10.

23. Implemented by the United States through the International Child Abduction Remedies Act, 42 U.S.C. §§ 11601 et seq.

24. See NIGEL LOWE, HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, PREL. DOC. NO. 8 A, A STATISTICAL ANALYSIS OF APPLICATIONS MADE IN 2008 UNDER THE HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION, PART I, at 14–25 (Nov. 2011), *available at* <http://www.hcch.net/upload/wop/abduct2011pd08ae.pdf>.

25. Merle H. Weiner, *Half-Truths, Mistakes, and Embarrassments: The United States Goes to the Fifth Meeting of the Special Commission to Review the*

Operation of the Hague Convention on the Civil Aspects of International Child Abduction, 2008 *UTAH L. REV.* 221, 223 n.5. (2008) (citing countries' answers to the pre-meeting questionnaire, which showed that "country after country, including the United States, recognized that domestic violence is frequently raised as an issue by the respondent in Hague proceedings").

26. U.S. *Response to Preliminary Doc. No. 21 Questionnaire Concerning the Practical Operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*, Hague Conference on Private International Law, sec. 5.1 (Nov. 2010), *available at* http://www.hcch.net/index_enph?act=publications.details&dtid+33 (follow "United States" hyperlink).

27. U.S. *Response to Preliminary Doc. No. 2, Questionnaire on the Desirability and Feasibility of a Protocol to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, Hague Conference on Private International Law, sec. 5.1 (Dec. 2010), *available at* <http://www.hcch.net/index.en.php?act=publications.details@pic=5290&dtid=33> (follow "United States" hyperlink).

28. Cindy Lederman, *From Lab Bench to Court Bench: Using Science to Inform Decisions in Juvenile Court*, *CEREBRUM*, Sept. 2011, *available at* <http://dana.org/Cerebrum/Default.aspx?id=39466>.

29. *Id.*

30. ROBERT L. LINSTENBEE JR. ET AL., REPORT OF THE ATTORNEY GENERAL'S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE at iv (Dec. 12, 2012), *available at* <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

31. Holt et al., *supra* note 10, at 805–06 (citations omitted).

32. Perry, *Maltreatment and the Developing Child*, *supra* note 11, at 4.

33. HELPING BABIES FROM THE BENCH, *supra* note 11.

FEMALE GENITAL MUTILATION IN THE UNITED STATES

Protecting Girls and Women in the U.S.
from FGM and Vacation Cutting

ACKNOWLEDGMENTS

Sanctuary for Families would like to recognize and thank the many women whose stories and voices inspired and informed this report. Their identities have been withheld for their safety and privacy.

The primary authors of this report are Archana Pyati and Claudia De Palma. Mariama Diallo, Laura-Lee Atkinson-Hope, and Sayoni Maitra contributed significant research, writing, and editing, and Kaitlin Juleus designed the report. The law firm Cleary Gottlieb Steen & Hamilton LLP contributed considerable legal research and analysis.

ABOUT SANCTUARY FOR FAMILIES

Sanctuary for Families is dedicated to the safety, healing and self-determination of victims of domestic violence and related forms of gender violence. Through comprehensive services for our clients and their children, and through outreach, education and advocacy, we strive to create a world in which freedom from gender violence is a basic human right.

Based in New York City, Sanctuary offers clinical, legal, shelter and economic empowerment services to more than 10,500 adults and children each year. We also seek to address the systemic barriers that perpetuate the cycle of violence by engaging in public outreach and education, and advocating for legislative and policy change. Sanctuary's Center for Battered Women's Legal Services is the largest provider in the United States of legal services exclusively for victims of gender violence.

Website | www.sanctuaryforfamilies.org

Facebook | www.facebook.com/sanctuaryforfamilies

Twitter | www.twitter.com/sffny



PO Box 1406
Wall Street Station
New York, NY 10268
212.349.6009

© 2013 Sanctuary for Families

EXECUTIVE SUMMARY

This report documents the rising prevalence of female genital mutilation (“FGM”) in the United States. It examines the current legal framework in place to address female genital mutilation when it is performed within our borders and through “vacation cutting,” in which young women in the U.S. are sent abroad to undergo the procedure. It then recommends steps needed to develop a more coordinated, effective response to protect girls and women in the U.S. affected by the threat of FGM.

Each year, three million girls and women around the world are at risk of undergoing FGM.

Female genital mutilation is a centuries-old practice that the World Health Organization defines as “the partial or total removal of the female external genitalia or other injury to the female genital organs for non-medical reasons.” FGM, which is ingrained in a diverse variety of cultural customs, is internationally recognized as a violation of women and girls’ fundamental human rights.

- The World Health Organization estimates that about 140 million women and girls worldwide are living with the consequences of FGM, and according to new estimates from United Nations Population Fund and UNICEF, at least 30 million girls under the age of 15 are at risk of being cut.
- Women who have survived FGM frequently describe significant physical, sexual, and psychological complications, some of which persist throughout their lives.
- The motivations most commonly articulated for FGM—such as enforcement of traditional notions of femininity, control of female sexuality, preservation of family honor, and preparation for marriage—tend to perpetuate discriminatory views about the status and role of women.

Female genital mutilation is increasingly threatening girls and women in the United States.

Although FGM is most prevalent in twenty-eight countries in Africa and the Middle East, it is no longer confined to distant shores. Every year, women in the United States discover that they, their daughters, and their loved ones face a very real and imminent danger of FGM in the U.S.

- Estimates from the Centers for Disease Control and Prevention indicate that at least 150,000 to 200,000 girls in the United States are at risk of being forced to undergo FGM.
- According to an analysis of data from the 2000 U.S. census, the number of girls and women in the United States at risk for female genital mutilation increased by 35 percent between 1990 and 2000.
- While this is a national problem, the greater New York City metropolitan area is home to more girls and women at risk of FGM than any other region in the United States.
- Each year, girls are exposed to FGM through a growing phenomenon called “vacation cutting,” in which families send their daughters abroad to undergo the procedure, typically during their school vacations.
- Girls and young women are also subjected to FGM on U.S. soil in covert and illegal ceremonies performed by traditional practitioners, or by health care providers who support FGM or do not want to question families’ cultural practices.

For many years, the United States has lagged behind international efforts to end female genital mutilation.

Female genital mutilation is prohibited in the U.S. by an evolving framework of international, federal, and state laws, but many of these laws have suffered from crippling loopholes or lacked the implementation mechanisms and political resolve necessary to defend those at risk of the practice.

- Despite the fact that FGM in all forms has been explicitly illegal in the United States since 1996, legislation criminalizing the practice has not been comprehensively implemented or enforced, and community members, social service providers and law enforcement officials often fail to identify, report or investigate incidents of FGM.
- Until 2013, the federal ban on FGM did not penalize the transport of minors overseas for the purpose of FGM, a glaring loophole that placed a significant number of girls in the U.S. outside the reach of any legislative protection.

Recent developments present an important opportunity to more effectively protect women and girls in the fight to end female genital mutilation.

Today, there is reason to believe that the tireless work of human rights groups, community-based activists, and legislative advocates has carried us to the threshold of a breakthrough in the campaign against female genital mutilation.

- In December 2012, the United Nations passed a landmark resolution, “Intensifying Global Efforts for the Elimination of Female Genital Mutilations,” calling on all countries to enact legislation banning FGM.
- In January 2013, President Barack Obama signed the “Transport for Female Genital Mutilation” Act, criminalizing the transportation of girls abroad to undergo FGM, and finally bringing the United States in line with long-standing international efforts to end the practice.

Now, advocates, survivors and community service providers must come together to translate policy into action.

As the prevalence of domestic and vacation cutting rises in the U.S., a small number of advocates, survivors, counselors, lawyers, and doctors across the country are examining ways to not only support and serve those who have experienced FGM, but to also protect girls and women at risk. International experience suggests that successful prevention of female genital mutilation in the U.S. requires a proactive and coordinated approach that includes:

- Community and survivor-led outreach and education about the consequences of FGM that engages religious and community leaders, parents, survivors, and at-risk women and girls;
- Internationally informed guidelines and training to assist front-line professionals to identify and protect girls at risk, and to provide education and resources on FGM and the legislation banning its practice;
- Robust laws that prohibit FGM locally and extraterritorially and implementation measures that provide clear guidance on culturally sensitive, prevention-centered enforcement; and
- Reporting and data collection on the incidence of FGM and vacation cutting in the U.S. to inform efforts to serve the needs of survivors, target and develop outreach and education, and ultimately ensure the safety and health of at-risk women and girls.

TABLE OF CONTENTS

INTRODUCTION p. x

PART I: WHAT IS FEMALE GENITAL MUTILATION? p. 1

How female genital mutilation is performed *p. 1*

Effects of female genital mutilation *p. 2*

Motivations underlying the practice *p. 5*

The role of religion in perpetuating FGM *p. 6*

PART II: FGM IN THE UNITED STATES p. 7

Vacation cutting *p. 8*

FGM as a result of constructive deportation *p. 9*

FGM on U.S. soil *p. 10*

PART III: THE LEGAL FRAMEWORK FOR ADDRESSING FGM p. 11

International laws prohibiting FGM *p. 11*

U.S. laws protecting women and girls from FGM *p. 12*

The enforcement gap *p. 13*

PART IV: RECOMMENDATIONS FOR BUILDING A MOVEMENT TO END FGM IN THE U.S. p. 15

Objective 1: Community and survivor-led outreach and education *p. 15*

Objective 2: Guidelines and training to assist in the identification
and protection of girls at risk *p. 16*

Objective 3: Robust, consistently enforced laws that prohibit FGM
locally and extraterritorially *p. 18*

Objective 4: Reporting and data collection *p. 19*

CONCLUSION p. 20

APPENDIX A p. 21

APPENDIX B p. 22

ENDNOTES p. 24

INTRODUCTION

Around the world, activists are rising up to end the centuries-old practice of female genital mutilation (also called FGM, female genital cutting, or female circumcision). Women and men in Senegal, The Gambia, Mali, Egypt, Iraq, Indonesia, and many other countries where FGM is practiced are using advocacy, art, drama, music, and literature to educate communities about FGM and to try to stop families from putting girls and women through this medically unnecessary procedure. They collaborate with international non-governmental organizations and agencies of the United Nations, which have long declared FGM a violation of human rights and a risk to the safety, equality, and dignity of girls and women.¹ Recognizing that each year three million girls and women continue to be at risk of being mutilated around the world, on December 20, 2012, the United Nations General Assembly passed a landmark resolution, “Intensifying Global Efforts for the Elimination of Female Genital Mutilations,” calling on all states to enact legislation banning FGM.

Female genital mutilation is most prevalent in communities based in Africa and the Middle East, but it is not confined to distant shores.² Despite the fact that female genital mutilation has been explicitly illegal in the United States since 1996, every year girls and women living here face a very real and imminent danger of mutilation when the procedure is carried out in covert and illegal ceremonies within U.S. borders, or through a practice known as “vacation cutting” in which girls are sent abroad to their ancestral homes during school vacations and forced to undergo the practice. Estimates from the Centers for Disease Control and Prevention (CDC) indicate that at least 150,000 to 200,000 girls in the United States are at risk of being cut here or through vacation cutting.³ According to an analysis of data from the 2000 U.S. census, this population is growing; between 1990 and 2000, the number of girls and women in the United States at risk for female genital mutilation increased by 35 percent.⁴

“People in the United States think that FGM only happens to people outside of the United States, but in all actuality, people here all over the country have been through FGM. Kids that were born in this country are taken back home every summer and undergo this procedure, and it’s nice to know that someone else heard our voices, and someone else took this stand with us.”

-Jaha, 23, The Gambia

Each year, Sanctuary for Families works hand-in-hand with community members, advocacy groups, and legal and social service providers to assist hundreds of girls and women affected by female genital mutilation. Sanctuary has also been working to find ways to better protect girls and women at risk of FGM, looking for guidance to France, the United Kingdom, Ireland, and other countries where legislation and public outreach efforts have been developed and implemented with varying success.⁵ These efforts led in part to the federal Transport for Female Genital Mutilation Act, signed into law on January 3, 2013, which criminalizes the transportation of girls abroad to undergo FGM, and finally brings the United States in line with long-standing international efforts to end the practice.⁶

With the momentum of the U.N. resolution calling for a total ban against FGM here and abroad, and the passage of the Transport for Female Genital Mutilation Act offering more robust federal protection for at-risk girls in the U.S., we now find ourselves at a critical turning point in the fight to stop female genital mutilation. It is vital that together we seize this opportunity to better protect girls and women facing mutilation, developing a collaborative, coordinated movement that prioritizes education and outreach about FGM, and engages faith leaders, survivors, community members, teachers, service providers and law enforcement in affected communities in efforts to more effectively defend the rights of girls and women at risk of the practice.

Sanctuary for Families offers this report as a tool to raise awareness about the impact and risks of female genital mutilation on girls and women in the United States, and to explore next steps in ending FGM once and for all.

PART I: WHAT IS FEMALE GENITAL MUTILATION?

The centuries-old practice of female genital mutilation is deeply ingrained in cultural norms and beliefs about the role of girls and women in society. Its context and consequences are often shrouded in secrecy, and misinformation about what the procedure entails and why it is performed is pervasive. An accurate, in-depth understanding of the practice in the communities where it remains widespread is necessary to begin to protect those in the United States who are at risk of FGM or now live with its consequences.

HOW FEMALE GENITAL MUTILATION IS PERFORMED

Female genital mutilation is most prevalent in twenty-eight countries in Africa and the Middle East, with the highest rates of cutting in Djibouti, Guinea, Mali, Egypt, Somalia, and Sudan.⁷ (See Appendix A.) In addition, there have been some reports of female genital mutilation among certain populations in India, Indonesia, Iraq, Israel and the Occupied Palestinian Territories, Jordan, Oman, Malaysia, Thailand, and the United Arab Emirates.⁸

The World Health Organization (WHO) defines female genital mutilation as “the partial or total removal of the female external genitalia or other injury to the female genital organs for non-medical reasons.”⁹ WHO outlines four types of female genital mutilation:¹⁰

Type I	Clitoridectomy, or the partial or total removal of the clitoris and/or the clitoral hood.
Type II	The partial or total removal of the clitoris and the inner labia, with or without the removal of the outer labia.
Type III	Infibulation, or the removal of the external female genitalia and the sealing or narrowing of the vaginal opening using stitches or glue. The clitoris may or may not be removed. A small hole is left for urination and menstruation and women subjected to this procedure are later cut open for intercourse and childbirth.
Type IV	All other harmful procedures to the female genitalia for non-medical purposes, such as pricking, piercing, incising, scraping, and cauterization.

Some types of female genital mutilation may be more prevalent in certain countries.¹¹ However, the type of female genital mutilation performed on a girl or woman depends on a number of factors, including the reason for the mutilation, the family’s historic practice, or the demands of her birth or marital community.¹² As such, several types of female genital mutilation may be prevalent in any one country, community, or even within a single family.¹³

The manner in which female genital mutilation is performed varies widely around the globe. Although it is commonly performed on girls before they turn 15, the specific age varies by region, local custom, and ethnic group,¹⁴ and in many countries, the average age is reported to be falling.¹⁵ The procedure may also be carried out on adult women, particularly around the time of marriage, and in some communities women face the risk of additional FGM later in life.¹⁶

Among some groups, female genital mutilation may be carried out on a series of young girls, one after the other, as part of a ritual or initiation ceremony.¹⁷ Though some communities have medicalized the practice,¹⁸ in the majority of cases, traditional practitioners without medical training perform the procedure as their vocation, or older women in the family or community may be responsible for the procedure, which usually takes place far from hospitals or clinics.¹⁹ As a result, most girls and women undergo female genital mutilation without anesthetics, antiseptics, or antibiotics.²⁰ The way female genital mutilation is performed may impact some of its psychological and physical consequences. However, even when FGM is carried out in medical settings, the impact of the sense of betrayal, the loss of sexual sensation and function, the motivations behind the procedure, and the sense of shame may all still deeply impact the women who have been cut.

EFFECTS OF FEMALE GENITAL MUTILATION

Regardless of the way female genital mutilation is performed, many survivors disclose ongoing physical, sexual, and psychological complications as a result of undergoing the procedure. The sexual and psychological impact of the practice cannot be understated, nor considered secondary to its physical impact; the consequences survivors suffer are typically complex, interlinked, often irreversible, and always very personal.

“The first girl went into a dark room, and I heard her screams. I thought, ‘they are going to kill me.’ Then I saw the girl come out with a very sad face, and I knew that something terrible was happening to us, even if they didn’t kill us. I wanted to run, but there was no way out.”

- Aminata, 49, Guinea

“Early [in the] morning—when it was not yet light out—the old women made us leave the village. We lined up, and they took us one by one. When it was my turn, one woman, very old and heavy-set, grabbed me and blindfolded me. She made me lay down on the mat, and someone grabbed one of my legs, while another person grabbed the other. Then someone cut me. It was the most terrible pain, and I struggled hard, though I could not get away from the grasp of the old women.

After cutting me, they used a sticky substance to glue me together so that I would heal closed. Afterward, we were told not to cry, but all I could do was cry.”

- Nafissatou, 53, Guinea

Physical Consequences

Girls and women who have undergone female genital mutilation report many physical complications, including:

Short-term:²¹

- severe pain from the cutting of nerve ends and sensitive tissue
- hemorrhage
- shock from pain or hemorrhage
- difficulty in urination or defecation due to swelling, edema, or pain
- infections, including tetanus and sepsis
- death due to hemorrhage or infections

Long-term:²²

- severe chronic pain due to trapped or unprotected nerve ends
- dermoid cysts
- abscesses
- genital ulcers
- excessive scar tissue (keloid)
- pelvic infections, urinary tract infections, and sexually transmitted and reproductive tract infections, including bacterial vaginosis and genital herpes
- slow and painful menstruation and urination, accumulation of menstrual blood in the vagina (hematocolpos), or urinary retention, especially in cases of Type III FGM or infibulation
- greater risk of HIV transmission due to increased prevalence of genital herpes and increased likelihood of bleeding during sexual intercourse

“I think FGM is the worst thing that has ever happened to me. I lost the right to my body and the desire to experience what it feels like to be a woman.”
- *Alima, 30, Guinea*

Sexual and reproductive health consequences

Women who have undergone female genital mutilation frequently describe severe pain during sexual intercourse.²³ Those whose female genital mutilation consists of a partial or total clitoridectomy also report a reduction or elimination of their ability to experience sexual arousal or fulfillment.²⁴ For many women, physical pain during intercourse persists throughout life due to infibulation or re-infibulation, extensive damage to sensitive genital tissue, or scar formation.²⁵

Many women who have undergone female genital mutilation also describe the significant impact that their mutilation has had on their maternal health, as FGM can increase the risk of childbirth complications, such as prolonged or obstructed labor.²⁶ Women who have undergone female genital mutilation are more likely to need a Caesarean section or an episiotomy, and they report a number of serious health problems, including perineal tears, obstetric fistula due to prolonged and obstructed labor, postpartum hemorrhage, and even maternal death.²⁷ The mother’s mutilation can also increase danger to the infant; death rates among infants increase by 15% for mothers with Type I FGM, 32% for Type II FGM, and 55% for Type III FGM.²⁸ Some women contract infections resulting from the cutting of the labia majora that result in infertility.²⁹

“I still am afraid of having sex at the age of 23. I try to avoid sex as much as I can because I only get pain from it.”
- *Kadiatou, 23, The Gambia*

“I saw a clitoris for the first time when my daughter was born.”
- *Salimata, 19, The Gambia*

Psychological consequences

For many girls and women, female genital mutilation is a psychologically traumatic event due to “pain, shock, and the use of physical force by those performing the procedure.”³⁰ Because family members frequently do not tell a girl or woman that they are taking her to undergo FGM, or refuse to listen to any objections, survivors often feel betrayed or socially isolated in the aftermath of the procedure, and come to mistrust or fear some of their closest family members, including their parents.³¹ Survivors may also harbor deep feelings of shame for being chastised for resisting or crying out during the procedure, or for being blamed

and told that they are “bad luck” because someone in their group did not survive the mutilation.

As a result of these experiences, many FGM survivors frequently suffer from depression, anxiety, multiple phobias, memory loss, and post-traumatic stress disorder (PTSD).³² Symptoms of PTSD can be acute or chronic, persist over many years, and may be triggered by certain memories, particularly during sexual intercourse, gynecological exams, and childbirth.³³ Survivors also commonly describe feeling incomplete and inferior to other women, low self-esteem, and poor body image. Victims who were subjected to FGM at an older age and have memories of the trauma are often the most severely affected, but even those who are cut as babies or young girls and therefore have no memory of the event itself suffer psychologically throughout their lifetimes, commonly reporting symptoms such as sadness, hopelessness and powerlessness.

Female genital mutilation may also impact the psychological aspects of sexual health. Traumatic memories of the procedure, painful menstruation, and painful intercourse can lead to fear of sexual intercourse.³⁴ Continuing lack of sexual enjoyment can also result in decreased sexual desire or cause other psychosexual health problems.³⁵ This in turn can lead to physical violence and domestic abuse by family or partners who expect women to perform sexually despite their history of gynecological trauma.

“FGM has affected me emotionally throughout my entire life . . . Those terrible moments stay with me, and I just cannot forget them. When I went to the hospital to give birth to my children, my experience with FGM was what I remembered most. Every time I shower, I think about it. There is a sadness and emptiness I feel every day because of what FGM took from me.”
- *Nafissatou, 53, Guinea*

“It is difficult to put into words just how terrifying and painful the whole experience was. For many months afterwards, I suffered recurring flashbacks, nightmares, and insomnia. I still suffer some to this day. Every time I would try to sleep I would see the women coming towards me with a knife.”
- *Fanta, 37, Guinea*

Karima, 39, Senegal

Karima has endured countless forms of violence throughout her life. She was only 9 years old when her mother’s brother brutally raped her, after years of sexual abuse, and left her bleeding profusely in their house in Kenya. Karima recalls her mother’s harsh reaction: “[S]he blamed me for the abuse” and forced her to undergo female genital mutilation. Even though her mother took her to a medical doctor, Karima endured a brutal form of FGM. “I started screaming for my mother to help me, but she just told me to shut up. [The doctor] used a scalpel, sliced off almost all of my clitoris and then sewed my vagina essentially shut without providing me with an anesthetic.” Just two years later, Karima was forced into a marriage with a 45 year-old man. She was sent back to the doctor’s office for a painful reversal procedure so that her husband could forcibly have intercourse with her. Karima now says, “I will speak out against FGM as I believe it violates women’s human rights and is designed to subjugate and control women.”

MOTIVATIONS UNDERLYING THE PRACTICE

It is not known when or why the practice of female genital mutilation began, and some historians believe that its original motivation has long since been forgotten.³⁶ Today, the tradition is commonly understood as a manifestation of cultural beliefs relating to gender, sexuality, marriage and family.³⁷ In many communities, in fact, FGM is thought to be so normal that the concept of a woman who has not undergone mutilation is inconceivable.³⁸ As a result, survivors and their allies routinely report that the motivations articulated for FGM perpetuate discriminatory views about the status and role of women in society

Female genital mutilation is often carried out to reinforce traditional notions of femininity; for example, some practicing communities believe mutilation enhances female “docility and obedience,” and mutilation is viewed to be essential to the initiation of girls into womanhood.³⁹ Female genital mutilation is also performed to “cleanse” or “purify” girls and women of past actions that are socially unacceptable to their communities.⁴⁰

Some communities also believe that female genital mutilation physically differentiates women from men. Among these families, the clitoris and the labia are considered “male-like” body parts, and their removal is seen as marking a girl’s identity as female.⁴¹ If a woman does not go through FGM, her society may not consider her “fully female,”⁴² and she may be ostracized because others in the community will say “she is like a man.”⁴³ Furthermore, some view women’s unexcised genitals as “ugly and bulky,”⁴⁴ whereas FGM brings about “smoothness,” which is considered beautiful, especially in communities that practice infibulation.⁴⁵

“In my village, FGM is seen as a way to ‘clean’ a girl of whatever she might have done before, to make her pure for her husband.”

- *Madeleine, 25, Burkina Faso*

Female genital mutilation is typically a strict requirement for marriage in the communities where it is practiced, in part because FGM is seen as ensuring premarital virginity and marital fidelity,⁴⁶ both of which are highly prized and carefully policed.⁴⁷ A clitoridectomy is believed to control a woman’s sexuality by removing her “site of sexual desire,”⁴⁸ and infibulations are performed in order to prevent sexual intercourse and maintain virginity until marriage.⁴⁹

In some cultures, FGM is thought to enhance men’s sexual pleasure.⁵⁰ After marriage, women’s infibulations are frequently cut open for their husbands,⁵¹ and after childbirth women may be subjected to re-closure (reinfibulation) to “make them ‘tight’ for their husbands.”⁵²

In many societies that practice FGM, women are viewed as the “gatekeepers of family honor,”⁵³ and female genital mutilation is thought to bring greater social value, status, respectability, and honor, not only to the girl undergoing the procedure, but also to her family members. For example, the bride price that a family can collect for a daughter who has undergone female genital mutilation may be significantly greater than that of one who has not;⁵⁴ infibulation can further increase the amount of money a groom will pay for a girl.⁵⁵ Because FGM is closely linked to gender identity, family honor, social status, and marriageability,

“In Mali, I only knew one woman who had not undergone excision. When the man she was supposed to marry found out that she was not excised he refused to marry her, claiming that it was unacceptable to marry her because it would be like he was marrying a man.”

- *Fatoumata, 29, Mali*

women who refuse the procedure face isolation, stigmatization, and difficulty finding a husband.⁵⁶ In some societies, women who have not undergone female genital mutilation are even believed to be “dirty” and consequently be forbidden from handling food and water.⁵⁷ As a result, many women describe immense social pressure to subject themselves or their daughters to FGM to avoid rejection by potential husbands and the larger community.⁵⁸

THE ROLE OF RELIGION IN PERPETUATING FGM

A persistent misconception about female genital mutilation is that the practice is required by religion, particularly Islam.⁵⁹ However, FGM is not particular to any religious group, and is not prescribed by any faith. It is prevalent among communities of different religious backgrounds, including Muslims, Christians, Jews, and followers of traditional animist religions.⁶⁰ Although in some countries members of one religious community may be more likely to practice female genital mutilation than others, in other countries, there

“I believe in Islam to this day . . . However, I do not share the Islamic beliefs of my husband and my family . . . My family’s beliefs that a woman should undergo FGM and marry who her family chooses are connected to their beliefs in Islam and our ethnicity. On the other hand, I believe that Islam does not command these things about women. I believe that men read the Quran and tell women what they think. Men do not state exactly what is written in the Quran, but transform it into something that is favorable to men and not to women.”

- *Khadija, 29, Burkina Faso*

is no significant difference in FGM prevalence between religious groups.⁶¹ A multi-country survey conducted by WHO reveals that the perceived link between female genital mutilation and religion may in fact be only a reformulation of the focus on women’s sexuality, as in many communities, FGM’s primary connection to religion is that it supports the religious expectation of sexual restraint in women.⁶²

Moreover, female genital mutilation predates Islam and is not practiced by the majority of Muslims in the world.⁶³ While some local leaders promote the practice, many well-known religious figures, scholars, and theologians have spoken out against FGM.⁶⁴ Secretary-General of the Organization of

Islamic Cooperation, Ekmeleddin Ihsanoglu, has stated that “This practice is a ritual that has survived over centuries and must be stopped as Islam does not support it.”⁶⁵ The late Sheikh Mohammed Sayed Tantawi, Grand Imam of Al-Azhar Mosque and Grand Sheikh of Al-Azhar University, has also remarked that “there is no text in Shari’a, in the Koran, in the prophetic Sunna addressing FGM.”⁶⁶ With regard to Christianity and Judaism, Bishop Mousa, Representative of Pope Shenouda III of the Coptic Orthodox Church, has also expressed, “There is not a single verse in the Bible or the Old or New Testaments, nor is there anything in Judaism or Christianity – not one single verse speaks of female circumcision.”⁶⁷

PART II: FGM IN THE UNITED STATES

Until quite recently, experts and advocates were unaware of the pervasive risk of female genital mutilation faced by girls and women living within the United States. In 1997, however, the Centers for Disease Control and Prevention (CDC) estimated that as many as 150,000 to 200,000 girls in the United States were at risk of being forced to undergo female genital mutilation.⁶⁸ Girls and young women were being subjected to the practice by traditional practitioners brought in from overseas to preside over covert ceremonies where an entire group of girls would be cut in the course of an afternoon;⁶⁹ after the practice on U.S. soil was criminalized in 1996, a rapidly increasing number of families began sending their female children overseas to undergo FGM to avoid the possibility of criminal charges.⁷⁰ Although updated studies are greatly needed, anecdotal evidence strongly indicates that the number of girls in the U.S. at risk of FGM has increased steadily since the CDC's original report.

Typically, girls in the U.S. are most affected by FGM if they are part of a community originally from a country where FGM is prevalent. In 2000, the U.S. states with the greatest estimated numbers of girls and women at risk were (in descending order): California, New York, New Jersey, Virginia, Maryland, Minnesota, Texas, Georgia, Washington and Pennsylvania.⁷¹ (See Appendix B, Fig. 1.) In particular, the metropolitan areas with the greatest numbers of girls and women at risk in 2000 were (in descending order): New York-New Jersey-Long Island, Washington DC-Baltimore, Los Angeles-Riverside-Orange County, Minneapolis-St. Paul, San Francisco-Oakland-San Jose, Atlanta, Seattle-Tacoma-Bremerto, San Diego, Houston-Galveston-Brazoria and Philadelphia-Wilmington-Atlantic City (see Appendix B, Fig. 2).⁷² Given the large number of states home to girls and women potentially at risk of FGM, this practice is a significant issue on a national level.

“People in the U.S. think vacation cutting happens only in New York because that is the capital of immigration, but FGM is impacting children in their communities; it is happening to the kids that go to their schools and enter their hospitals.”

- *Jaha, 23, The Gambia*

Immigrant parents and relatives in the U.S. who continue to adhere to the practice often view female genital mutilation as an important step towards maintaining their first-generation children's identity within their cultural community of origin.⁷³ Others see it as a “bulwark” against Western influence on their daughters, and a way of reinforcing their culture in a foreign land.⁷⁴ Many other families, despite their personal opposition to FGM, feel immense pressure from their spouses, elders and community members to pass on the traditions of their homeland, or are tricked into relinquishing their daughters into the care of relatives who arrange to have their daughters forcibly cut without their knowledge.

“My family gets frustrated with me when I try to talk about [FGM]. They believe that I have abandoned my culture in favor of Western ideas.”

- *Mamasa, 27, Guinea*

Others see it as a “bulwark” against Western influence on their daughters, and a way of reinforcing their culture in a foreign land.⁷⁴ Many other families, despite their personal opposition to FGM, feel immense pressure from their spouses, elders and community members to pass on the traditions of their homeland, or are tricked into relinquishing their daughters into the care of relatives who arrange to have their daughters forcibly cut without their knowledge.

Christie, 19, United States

Christie, born in New York City, went to visit Guinea on vacation with her father. Unbeknownst to Christie, her father had arranged this trip for the purpose of forcing her to undergo female genital mutilation. In fact, Christie's father was angry with her mother, Fanta, who had called the police in response to his violent abuse, and told Fanta that this was Fanta's punishment for involving the "system" in their marriage. One day, while in Guinea, Christie returned from school to find many people from the village making food and preparing for a ceremony, and one of her aunts told her that she would soon undergo FGM. Opposed to FGM and afraid for her safety, Christie escaped to the U.S. embassy to seek help. There, she was able to speak with Fanta for the first time in several months, and they were reunited in New York.

VACATION CUTTING

Each year, young immigrants, permanent residents and U.S. citizens are sent abroad to undergo female genital mutilation in a practice that has been termed "vacation cutting." Although a more extensive official study on vacation cutting is needed, testimony from survivors indicates that family members are increasingly sending their female children overseas to undergo FGM, typically during their school vacations, as part of a trip organized to expose the girls to the customs of their homelands. Although the motivations

"When I was 16, my father told me that 'the world is far beyond America,' and that he had arranged for me and my little sister to travel with a family friend back to Gambia, his country of origin, during our time off from school. When we arrived in Gambia, my grandmother greeted us warmly and spent the next few days teaching us 'what it takes to earn respect' from our future husband and others in society, and explaining that FGM would remove 'unclean' body parts that were susceptible to disease. She warned us that if we refused to undergo FGM, she would be disappointed in us, and that the entire village would find out and force FGM upon us against our will."

- *Kadiatou, 27, The Gambia*

underlying vacation cutting are largely similar to those used for FGM in the countries to which girls are sent, vacation cutting is sometimes also used by parents as a way of tempering the influence of American culture, and families may threaten to return children to their country of origin if that child demonstrates too much assimilation to U.S. social mores.

In some cases, girls are unaware that they are being sent abroad to be cut until they are actually forced to undergo the procedure. Others explain that even after they learned of their family's plans to have them subjected to female genital mutilation, they did not know enough about the ritual to know they should resist their family's wishes. One 17-year-old girl who was sent to Angola was told by family members that she was being prepared for "circumcision" in order "to become a woman, in order for her husband to respect her, [and] in order for her to get her place [in society]." She did not know exactly what the procedure involved, and concluded from her family's reassurances that "this was the best thing for her."

Often, girls are sent to be cut overseas not only without their own consent but without the knowledge or permission of one or both of their parents.⁷⁵ There are thousands of women living in the United States who have been through female genital mutilation, and many of them desperately wish to protect their

daughters from the same fate. However, controlling spouses, elder relatives and community members often have great overriding authority over these women's wishes.⁷⁶ Consequently, mothers may agree to send their daughter to their homeland to meet relatives and learn about their culture, unaware of arrangements by grandparents or other family members living in the U.S. or abroad to subject her to FGM.⁷⁷

In other cases, daughters may be abducted and sent abroad to undergo the procedure against their mother's express will.⁷⁸ As one Guinean survivor explains, "My two elder daughters and my niece were victims of FGM without my knowledge and against my clear wishes. I myself am a victim of FGM, which I suffered when I was seven or eight years old, and I do not want to see my youngest daughter suffer the same fate." This survivor's situation mirrors that of countless immigrant women. One young mother from The Gambia, who is vehemently opposed to FGM, but whose abusive and controlling husband belongs to a tribe that mandates the procedure, refused to sign her infant daughter's U.S. passport in an effort to prevent her husband from abducting her, only to have him threaten to forge the signature himself in order to send her abroad to be cut. Another immigrant survivor from Mali sought legal protection from her relatives abroad the instant she discovered she was expecting a baby girl. However, because many of these mothers are themselves undocumented, they are frequently afraid of seeking help from the authorities for fear of being forcibly removed from the U.S., where the chance of their daughters undergoing FGM may go from potential to certain.

Aida, 25, Ivory Coast

Aida was born in a country in West Africa and came to the United States to join her parents when she was 13 years old. Aida learned English quickly, made friends with her American-born peers, and excelled in her classes. Unfortunately, Aida's parents started threatening to send her back to Africa to undergo female genital mutilation, saying that this was a family tradition and would ensure that she would stay a virgin and make her an acceptable bride to her much older cousin, to whom she had already been promised in marriage. Aida was aware of the potential sexual, physical, and mental health consequences of FGM and refused to comply. She also knew that her parents had done the same thing to two of her unwitting older sisters, and was determined to protect herself. But her parents' threats intensified, and they began to beat Aida for trying to refuse. Aida was scared to report the abuse and the threat of cutting because she was undocumented, and also because she had a younger sister to worry about, but she found the courage to confide in one of her guidance counselors. Unfortunately, her counselor felt that this was a cultural problem, one best sorted out by the family, and he did not report the abuse and threat of grave harm to the police or children's protective services, which he was obligated to do under state law. Aida, who was undocumented, eventually found a youth group that referred her to a lawyer who helped her to obtain immigration status. Aida then set up an independent life, free from the threat of FGM.

FGM AS A RESULT OF CONSTRUCTIVE DEPORTATION

Undocumented parents with final deportation orders to countries where FGM is prevalent face an agonizing decision between being permanently and irrevocably separated from their children, and taking them back to a country where they will face a practice they oppose.⁷⁹ In many cases, these U.S.-born daughters, still very young and entirely dependent on their parents, have no choice but to follow the family back to their

home country, where they are subjected to FGM. A growing number of girls face this “constructive deportation” when their parents are removed; in 2009, 350,000 children were born in the U.S. to at least one undocumented immigrant parent,⁸⁰ and despite recent changes in policy directing immigration agents to consider an undocumented immigrant’s U.S.-citizen family ties in discretionary enforcement decisions,⁸¹ U.S. Immigration and Customs Enforcement (ICE) reports that 45,000 of these parents were deported in just the first 6 months of 2012 alone.⁸²

FGM ON U.S. SOIL

Anecdotal evidence indicates that female genital mutilation also continues to be performed within the United States. Typically, FGM in the U.S. is carried out by traditional practitioners who operate covertly and illegally.⁸³ When U.S. health care providers carry out the procedure, they frequently come from countries where the practice is prevalent, and they operate on girls from their own communities at the request of a child’s parents.⁸⁴

Some health care providers may not personally support FGM, but do not want to question their patients’ cultural practices.⁸⁵ These medical professionals sometimes agree to make “clitoral nicks,” small incisions in the clitoral hood under local anesthesia, in lieu of more extensive FGM.⁸⁶ This and other “symbolic” forms of FGM have been the focus of debate among health care professionals, and the practice of nicking was even briefly endorsed by the American Academy of Pediatrics (AAP) as a way of meeting families’ perceived cultural requirements while avoiding more severe physical injury.⁸⁷ However, after swift efforts to educate the medical community on the discrimination inherent in all forms of the practice, and the harmful role that even “symbolic” FGM can play in perpetuating gender-based violence, the AAP quickly retracted its controversial policy and issued a statement that, consistent with WHO and U.N. policy, “it does not endorse the practice of offering a ‘clitoral nick.’”⁸⁸

“People in Africa will not let it go. They will say, ‘see, even in America they permit FGM.’ It doesn’t matter how you cut, the fact that someone has touched and modified your genitals will stay with you the rest of your life.”

- *Kadi, 43, Ivory Coast*

PART III: THE LEGAL FRAMEWORK FOR ADDRESSING FGM

Female genital mutilation is explicitly and implicitly prohibited by an evolving framework of international, federal and state laws. Historically, however, many of these laws have suffered from crippling loopholes or lacked the implementation mechanisms and political resolve necessary to effectively enforce them and successfully defend those at risk of the practice, both in the U.S. and abroad.

INTERNATIONAL LAWS PROHIBITING FGM

Female genital mutilation has long been considered a violation of the human rights of girls and women under international law. The Universal Declaration of Human Rights (1948) (“UDHR”) and the International Covenant on Civil and Political Rights (1966) (“ICCPR”) provide for every person’s rights to life, liberty and security of person, and to be free from cruel, inhumane or degrading treatment.⁸⁹ The International Covenant on Economic, Social and Cultural Rights (1976) (“ICESCR”) requires countries to uphold the right to the enjoyment of the highest attainable standard of physical and mental health.⁹⁰ In addition, the Convention on the Rights of the Child (1989) (“CRC”) requires countries that signed the treaty to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical and mental violence” and to provide “social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment.”⁹¹

The Convention on the Elimination of All Forms of Discrimination Against Women (1979) (“CEDAW”) not only bars discrimination against women but also requires countries to modify their “social and cultural patterns of conduct . . . with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”⁹² The governing body of this treaty, the CEDAW Committee, adopted three General Recommendations (Nos. 14, 19, and 24) to further clarify these requirements, which make clear that FGM is a “form of violence against women” and that it carries “severe health and other consequences for women and girls.”⁹³

Since 1997, WHO has issued multiple joint statements with the United Nations Children’s Fund (UNICEF), the United Nations Population Fund (UNFPA), and other agencies decrying the practice of FGM.⁹⁴ Since then, progress has been made in the development of international monitoring bodies and resolutions that condemn the practice, a revised legal framework, and growing political support to stop the practice.

UNITED STATES LAWS PROTECTING GIRLS AND WOMEN FROM FGM

In 1996, the federal immigration appeals court (the Board of Immigration Appeals or “BIA”) issued a landmark decision granting asylum to a woman fleeing female genital mutilation in her native country of Togo.⁹⁵ In its opinion, the court established that FGM is a harm severe enough to constitute “persecution” under immigration law, and that women threatened with FGM deserve the protection of the U.S. government because they are targeted on account of their social group.⁹⁶ Asylum represents a significant form of protection for girls and women in the U.S. who lack immigration status and fear being deported to their home country to undergo FGM.

The same year the BIA issued this decision, the U.S. Congress enacted legislation criminalizing the performance of female genital mutilation in the United States on anyone less than 18 years of age.⁹⁷ The statute, which made the act of performing FGM on a minor punishable by a 5-year term of imprisonment, and clearly excluded culture as a defense to the crime, was intended to protect girls and to bring U.S. law in line with obligations under the International Covenant on Civil and Political Rights.⁹⁸ With its passage of the law, Congress also directed the Immigration and Naturalization Service (now the U.S. Citizenship and Immigration Services) and the State Department to make information available to all immigrants about the harms and legal consequences of performing FGM.⁹⁹ The law further appropriated money for the Department of Health and Human Services to undertake a study of the prevalence of FGM across the country and to carry out outreach and educational activities in communities that practice FGM.¹⁰⁰ None of these activities have taken place since the passage of the law.

“...This means a lot... when I heard about this law being passed, I think it was probably the best day of my life, because that’s just how important this issue is to me, and not just to me, it’s important to my cousins, to my nieces that were born in the U.S. that have gone through this. I’m happy to know that kids like my daughter will not have to worry about someone sending them back home and having this done to them, so this is a huge step.... You have no idea what this means to me...”

- *Jaha, 23, The Gambia*

Nearly two decades later, long after other countries issued similar laws, the “Transport for Female Genital Mutilation” amendment was signed into law by President Barack Obama in January of 2013.¹⁰¹ This new “extraterritoriality” or “vacation” provision, as it has been called, was the result of a multi-year effort by Representatives Joseph Crowley of New York and Mary Bono Mack of California to criminalize the act of transporting girls abroad with the purpose of subjecting them to FGM. The bill was introduced in 2010 and again in 2011¹⁰² by Senate Majority Leader Harry Reid as the “Girls Protection Act,” and was ultimately passed as an amendment to the National Defense Authorization Act for Fiscal Year 2013.¹⁰³ The Act amends the federal criminal statute under 18 U.S.C. § 116(d) to read:

Whoever knowingly transports from the United States and its territories a person in foreign commerce for the purpose of conduct with regard to that person that would be a violation of subsection (a) if the conduct occurred within the United States, or attempts to do so, shall be fined under this title or imprisoned not more than 5 years, or both.¹⁰⁴

This amendment, which was passed by Congress on the same day that the United Nations General Assembly passed the first resolution calling for a global ban on the practice of FGM, establishes parity

between the sanctions levied on acts of FGM in the U.S. and acts of FGM planned within U.S. borders and executed abroad.¹⁰⁵ The Act's passage was celebrated by women's rights advocates for closing the pernicious loophole in the federal FGM ban, and for "set[ting] an example for other countries and send[ing] a clear message to all that FGM is a criminal act that carries serious consequences" wherever it is performed.¹⁰⁶

In addition to the federal legislation addressing FGM, twenty states have laws that specifically criminalize FGM.¹⁰⁷ Although the law of each of these states differs in some respects from the federal statute, the basic definition of FGM is largely the same.¹⁰⁸ However, many of the state laws extend protections against FGM beyond the scope of the federal statute. In a departure from both the federal law and the majority of jurisdictions that criminalize FGM, Tennessee, Minnesota, and Rhode Island do not require victims of FGM to be minors.¹⁰⁹ Furthermore, at least twelve states make it a felony for a parent or guardian to permit a minor to undergo FGM, even if the parent or guardian is not the person who ultimately carries out the mutilation.¹¹⁰ For example, the Delaware Code provides that a "parent, guardian or other person legally responsible or charged with the care or custody of a female minor allows the circumcision, excision, or infibulations, in whole or in part, of such minor's labia majora, labia minora or clitoris" is guilty of FGM.¹¹¹ Colorado, Georgia, Illinois, Louisiana, Maryland, Missouri, New York, Oregon, and West Virginia also take this approach.¹¹² Florida likewise makes it a crime for a parent or guardian to subject a minor child under their care to FGM, but the Florida statute distinguishes between a person who commits FGM and a person who only provides his or her consent: under Florida law, committing FGM is classified as a first degree felony, while knowingly consenting to FGM on behalf of a minor is classified as a third degree felony.¹¹³ California criminalizes FGM within the scope of its child abuse statute, and applies an additional term of imprisonment to those who carry out FGM, "in addition and consecutive to the punishment" given for violating the general child abuse provisions.¹¹⁴

Of the twenty states with laws prohibiting the practice of female genital mutilation, however, only four have statutes broad enough to cover vacation cutting. These laws were passed in response to efforts by anti-FGM activists or community outrage after the occurrence of vacation cutting was exposed:

- **Florida:** Under the Florida statute, "[a] person who knowingly removes, or causes or permits the removal of, a female person younger than 18 years of age from [the] state for purposes of committing female genital mutilation" is guilty of a felony.¹¹⁵
- **Georgia:** Under Georgia law, a person "who knowingly removes or causes or permits the removal of a female under 18 years of age from [the] state for the purpose of circumcising, excising, or infibulating, in whole or in part, the labia majora, labia minora, or clitoris of such female" is guilty of FGM.¹¹⁶
- **Louisiana:** Under Louisiana law, a person is guilty of female genital mutilation if that person "knowingly removes or causes or permits the removal of a female minor from this state for the purpose of circumcising, excising, or infibulating, in whole or in part, the labia majora, labia minora, or clitoris of such female."¹¹⁷
- **Nevada:** The Nevada law against FGM extends to any person who willfully "[r]emoves a female child from [the] State for the purpose of mutilating the genitalia of the child."¹¹⁸

Where states lack specific legislation criminalizing female genital mutilation, child abuse statutes can provide protection for young girls facing FGM within the U.S. The Federal Child Abuse Prevention and Treatment Act provides minimum standards for state law definitions of child abuse and neglect. It states that “the term ‘child abuse and neglect’ means, at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm.”¹¹⁹ Furthermore, all states have laws defining and criminalizing child abuse and neglect, which, although often broadly defined, encompass the harm of FGM.¹²⁰ California and Illinois have already explicitly enumerated FGM as a type of child abuse within their child welfare laws,¹²¹ while Rhode Island defines FGM within its assault and battery statute.¹²²

THE ENFORCEMENT GAP

To date, there has been a glaring absence of prosecutions in the U.S. related to cases of FGM under both state and federal law: as of 2012, there have been no prosecutions under federal law, and only one criminal case has been brought forward under a state statute.¹²³ The failure to enforce existing FGM legislation may leave potential FGM victims without adequate protection.

State and local child abuse laws are also frequently underutilized in the context of FGM, especially in states where there is no explicit state law criminalizing FGM. In many states, child abuse statutes contain certain exceptions for certain culturally influenced decisions regarding the medical treatment of children,¹²⁴ and local authorities often lack guidance as to whether this exception extends to a “cultural” practice such as FGM.¹²⁵ Furthermore, because reporting obligations depend on the state’s definition of “child abuse,” mandated reporters, such as social workers, psychologists, and physicians, are likely to be unsure as to whether they have a clear legal responsibility to inform authorities of suspected cases of vacation cutting. Authorities are expected to take seriously any complaints of child abuse or threats of child abuse, and FGM should be treated the same. State procedures typically take the need for family unity into consideration when all forms of child abuse are investigated; there is no reason why FGM should be considered a special category of violence.

“FGM is something that has affected all of our lives... at least now we know that there’s a law out there that’s protecting us, there’s a law out there that’s defending us, we can stand up and say that, you know what? This can’t keep happening to us anymore, we have a law in the U.S. that says that it’s illegal to take these kids out of the country and take them to another country and have this performed on them.”

- Jaha, 23, *The Gambia*

In addition, very few reports have been made by those individuals at immediate risk of FGM here or through vacation cutting. This underreporting can be partly attributed to lack of knowledge among victims, community members and service providers about the laws protecting girls at risk. However, reasons for underreporting likely also include reluctance on the part of the girl or her family to come forward, precisely because they know and fear the legal penalties for doing so. Many girls fear that innocent family members, especially their mothers, will be considered complicit in their family’s efforts to force them to undergo FGM, or worry that if they report their relatives, they will be arrested, prosecuted, and possibly deported. Community pressure to avoid involvement of law enforcement can also be highly influential upon young people.

PART IV: RECOMMENDATIONS FOR BUILDING A MOVEMENT TO END FGM IN THE U.S.

As the prevalence of domestic and vacation cutting rises in the U.S., a small number of advocates, survivors, counselors, lawyers, and doctors across the country are examining ways to support and serve those who have experienced FGM and to protect girls and women at risk.

International experience suggests that successful prevention of female genital mutilation requires a proactive and coordinated approach that includes:¹²⁶

1. Community and survivor-led outreach and education;
2. Guidelines and training to assist front-line professionals to identify and protect girls at risk;
3. Robust, consistently enforced laws that prohibit FGM locally and extraterritorially; and
4. Reporting and data collection.

“I would never want anyone to cut me like that. I want to be able to enjoy the same things other girls do, to be healthy, to be free from infections, scarring, pain, bleeding, and other problems I know girls who have undergone FGM have to deal with. I firmly believe that the practice of FGM is a health risk to women and girls, and I know for sure that I would risk everything to avoid it if I could. If I ever had a daughter, I would certainly fight to be sure she couldn't be cut either.”

– *Salima, 21, Guinea*

OBJECTIVE 1: Community and survivor-led outreach and education

The cornerstone of the effort to protect affected girls and women in the United States is outreach and education about the consequences of FGM. While a few community-based and advocacy organizations currently conduct such outreach, more and coordinated efforts are needed to broaden awareness and effectively break the silence around this practice, especially in light of the new vacation cutting amendment. Sensitive, culturally competent collaboration between advocates, community leaders, survivors, family members, and those at risk can prevent FGM from occurring. Education must move beyond theoretical justifications for ending the practice and emphasize a victim-centered, prevention-focused approach. An effective campaign must successfully galvanize the following stakeholders:

- **Religious and community leaders:** Faith leaders such as Imams and neighborhood country association presidents are highly respected in their communities, and thus represent crucial allies in the quest to educate their constituencies about the harms and illegality of FGM.
- **Parents:** Parents must understand the importance of educating their daughters about the practice of FGM, what the procedure entails, and the names by which it may be referred in their native language. They should also be encouraged to create safety plans with their children in the event that they are sent abroad. These safety plans can include simple measures like memorizing emergency phone numbers, locating and keeping on hand the address of the nearest U.S. embassy, and ensuring that they have pocket money for a cab in the event that they need to flee.
- **Adolescent girls:** Young women at risk of female genital mutilation must be given a safe space in which to voice possible concerns they may have about FGM, and receive education on the laws in place to protect their rights. Presentations and group-led discussions on female genital mutilation can easily be integrated into similar programs already offered by middle schools and high schools about self-defense, domestic violence, or reproductive health.
- **Survivors:** Initial outreach efforts have demonstrated the powerful influence of experience-based advocacy in combating FGM. Where possible, survivor-led community education can provide an incredibly convincing and empowering argument that FGM is hurting the communities in which it is practiced. Although historically it has been difficult and even dangerous for survivors and their allies to voice opposition, youth from affected communities living in the United States are organizing to change this, and a number of young women are beginning to speak out.

“[The law] is not the end of it, now we need to spread the word out there, we need to let people know that this law is out there, we need to educate people in our community, we need to educate our teachers, we need to educate our doctors, our nurses, and let them know to look out for kids that have gone through this, because they need counseling, they need help. So this is the first step, and it’s the most important step. Now all of us collectively have to do something to do the rest.”
 - Jaha, 23, *The Gambia*

OBJECTIVE 2: Guidelines and training to assist in the identification and protection of those at risk

When a girl fears that her parents or other family members are arranging for her to be cut overseas, she may confide in her guidance counselor, social worker, therapist, or doctor. As such, school officials, public service providers, and health care professionals must play a fundamental role in preventing FGM from occurring. Unfortunately, currently these front-line agents lack the education on the issue and the tools they need to interview FGM survivors and identify and assist individuals at risk of the practice.

Appropriate guidelines should be developed in the United States that provide best practices for identification and protection of those at risk, and should address:

- The impact of female genital mutilation on the physical and mental health of girls and women in the United States;

- Descriptions of the various federal and state legal provisions that must be upheld by all service providers, including their obligations to report instances of actual or threatened female genital mutilation;
- Tailored guidelines on prevention and intervention;
- Resources available to at-risk and affected women and girls; and
- Creative, strategic tactics currently being used in other countries to tackle the many barriers to effective protection of girls and women at risk of FGM.

Other countries, such as the United Kingdom, have put protocols in place to educate service providers and to require them to investigate the possibility of female genital mutilation with clients and patients.¹²⁷ U.S. law enforcement and children’s protection agencies, as well as school counselors, teachers, lawyers, and medical personnel, should likewise be provided with comprehensive training on how to sensitively raise issues surrounding the risks and consequences of FGM, how to identify common indicators that suggest an imminent risk of FGM, and how to quickly and effectively respond to requests for help. It is particularly vital that this training be provided to those service providers most likely to come into contact with girls and women at risk:

- **Teachers:** Teachers must be educated about the practice and consequences of FGM, taught to identify common signs indicating that a student may be at risk of undergoing the procedure, and trained to educate families about the importance of complying with federal and state FGM laws. Likewise, teachers should be trained to monitor children who return to the classroom and to investigate red flags that may indicate the child has undergone FGM. When appropriate, teachers must be educated about the importance of their duty to report FGM.
- **Children’s protection agencies:** Case managers, social workers and other child protective specialists require training on how to respond to reports of FGM, how to identify signs of FGM, and how to distinguish FGM from cultural practices that may be exempted from child abuse standards.
- **Social service and public benefits agencies:** Local, state and federal service agencies that routinely interact with immigrant communities should be trained to sensitively raise issues surrounding FGM and to educate their clients on the importance of complying with FGM laws.
- **Doctors, counselors, and legal service providers:** Practitioners who routinely interact with girls and women in immigrant communities should be trained to raise issues surrounding FGM and to sensitively and supportively address the needs or concerns of affected patients. Information on FGM’s consequences and context should be integrated into trainings on patient care, domestic violence, and cultural competency at medical schools, social work schools, and law schools.
- **Airport security, border patrol, and embassy personnel:** The Transportation Security Administration and Customs and Border Patrol must be educated about the prevalence of vacation cutting and trained to respond quickly and effectively to girls and women who seek help and inform them that they are

afraid they may be about to be transported abroad for the purpose of female genital mutilation. The Department of State must likewise train its embassy staff in countries where FGM is prevalent to address requests for help from girls who have been taken abroad.

- **Law enforcement:** Law enforcement personnel must also be trained to understand and support victims who seek help from police or make reports about a threat of FGM. Trainings should emphasize the importance of immediate assistance to the victim, and the proper procedures that must be followed to respectfully and sensitively investigate allegations of wrongdoing. Law enforcement officials should also be equipped with appropriate referrals to shelters, legal representation, and supportive counseling for victims.

OBJECTIVE 3: Robust, consistently applied laws that prohibit FGM locally and extraterritorially

Through the decades-long efforts of survivors, community members, and advocates, an evolving body of laws has been developed that represents the first steps towards better safeguarding vulnerable women's rights and health against female genital mutilation in the United States. Now, these laws must be strengthened and upheld in the following ways:

- States that do not yet have laws prohibiting female genital mutilation should adopt such laws. The laws should include protections for girls and women against forcible FGM in the U.S. and abroad through vacation cutting.
- State laws that protect children from abuse should be interpreted to include female genital mutilation as a form of child abuse. Where such an interpretation is not possible, child protection laws should explicitly incorporate FGM. Any complaints of a risk of FGM should be carefully investigated just like other forms of child abuse.
- The federal ban on FGM and its recent amendment should be upheld. This means that mandated reporters must uphold their legal duty to respond to suspected female genital mutilation and report its threat or practice accordingly, and that reports of female genital mutilation occurring on U.S. soil as well as any transport for the purpose of FGM should be investigated by the appropriate authorities.
- The provisions of the 1996 federal law requiring outreach and data collection with regard to female genital mutilation should be respected; the federal government should allocate funds so that community-based organizations, local non-profit organizations, and federal agencies can inform communities about the illegality of FGM.
- In order to be successfully implemented, guidelines should be promulgated that explicitly charge crime units, agencies, and authorities responsible for investigating child abuse and sexual assault with enforcement of FGM laws. Due to the unique and sensitive nature of the circumstances surrounding FGM, these laws should mandate detailed, sensitized training on how to enforce legislation in a way that is not discriminatory against family members and immigrant communities. Federal guidelines can also strengthen enforcement of state mandatory reporting laws by clarifying that FGM in all forms is child abuse.

OBJECTIVE 4: Reporting and data collection

Currently, the U.S. government maintains no data on the number of girls and women who have undergone female genital mutilation in this country or through vacation cutting. With no accurate, objective figures available on the prevalence of the practice, affected girls and women continue to live in the shadows. Comprehensive data would enable advocates and providers to better serve the needs of survivors, target and develop outreach and education efforts aimed at prevention, and ultimately better ensure the safety and health of at-risk women and girls.

CONCLUSION

As female genital mutilation becomes better understood as a form of gender violence that perpetuates inequality, survivors, human rights advocates and governments in the countries where FGM is most commonly practiced have formed a global community of voices calling for an eradication of the custom. Across the world, its members are fighting—against all odds and sometimes in the face of great personal peril—to protect the safety and dignity of at-risk girls and women wherever they can be found.

It is time for the United States to establish itself as a committed leader within this community. Although the U.S. now grants safe haven to those seeking protection from female genital mutilation abroad, our country has failed to adequately protect the girls and women—whether undocumented, U.S. citizens, adults, or infants rushed to advocates’ doors by terrified mothers—who fear FGM that is performed or planned in the U.S. Until we can protect the girls and women within our borders as well as we protect those who are fleeing harm from distant shores, we have not adequately fulfilled our international obligation to help women and their families build lives free from the threat of violence.

APPENDIX A: Global prevalence of FGM

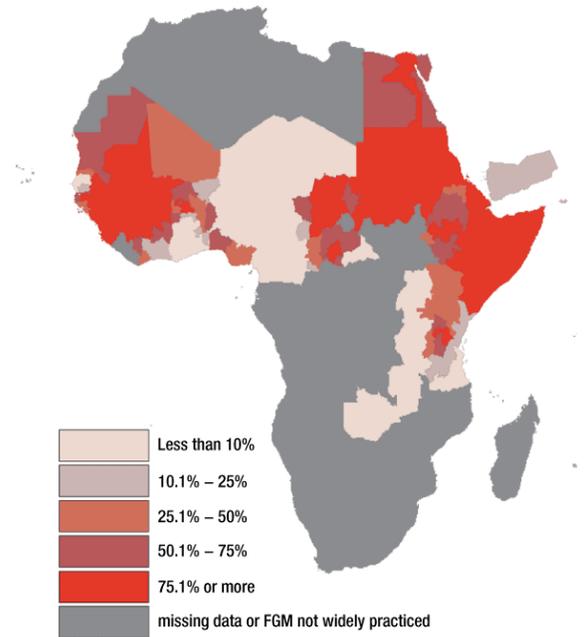
Fig. 1: Countries where FGM has been widely documented (girls and women aged 15-49)

Country	Year	Estimated prevalence of FGM (%)
Benin	2006	12.9
Burkina Faso	2006	72.5
Cameroon	2004	1.4
Central African Republic	2008	25.7
Chad	2004	44.9
Côte d'Ivoire	2006	36.4
Djibouti	2006	93.1
Egypt	2008	91.1
Eritrea	2002	88.7
Ethiopia	2005	74.3
Gambia	2005/6	78.3
Ghana	2006	3.8
Guinea	2005	95.6
Guinea-Bissau	2006	44.5
Kenya	2008/9	27.1
Liberia	2007	58.2
Mali	2006	85.2
Mauritania	2007	72.2
Niger	2006	2.2
Nigeria	2008	29.6
Senegal	2005	28.2
Sierra Leone	2006	94
Somalia	2006	97.9
Sudan, northern* (approximately 80% of total population in survey)	2000	90
Togo	2006	5.8
Uganda	2006	0.8
United Republic of Tanzania	2004	14.6
Yemen	2003	38.2

Source: MICS, DHS, and other national surveys. Table developed by WHO.¹²⁸

*Note: Research conducted before the independence of South Sudan in July 2011.

Fig. 2: Prevalence of FGM in Africa and Yemen (girls and women aged 15-49)



Source: MICS, DHS, and other national surveys, 1997-2006. Map developed by UNICEF, 2007.¹²⁹

APPENDIX B: Prevalence of FGM in the U.S.

Fig. 1: Girls and women living in the U.S. estimated to be at risk of FGM, by state¹³⁰

State	Total	Under 18	18+
U.S.	227,887	62,519	
Alabama	657	118	539
Alaska	96	-	96
Arizona	2,741	999	1,742
Arkansas	157	-	157
California	38,353	9,631	28,722
Colorado	1,885	516	1,369
Connecticut	1,008	272	736
Delaware	375	237	139
District of Columbia	2,619	418	2,201
Florida	4,894	919	3,975
Georgia	9,531	2,404	7,128
Hawaii	103	-	103
Idaho	528	386	141
Illinois	6,420	1,307	5,114
Indiana	1,480	446	1,035
Iowa	828	213	614
Kansas	114	-	114
Kentucky	1,052	67	985
Louisiana	1,239	434	805
Maine	-	-	-
Maryland	16,264	4,466	11,798
Massachusetts	5,231	1,318	3,912
Michigan	5,175	1,578	3,596
Minnesota	13,196	3,691	9,505
Mississippi	46	23	23
Missouri	1,320	440	879
Montana	4	-	4
Nebraska	497	274	223
Nevada	604	-	604
New Hampshire	92	83	9
New Jersey	18,584	5,605	12,978
New Mexico	123	-	123
New York	25,949	7,675	18,274
North Carolina	4,297	973	3,325
North Dakota	1,134	837	298
Ohio	4,834	1,680	3,154
Oklahoma	410	43	368
Oregon	3,524	766	2,758
Pennsylvania	6,508	1,357	5,151
Rhode Island	1,271	214	1,057
South Carolina	680	261	419
South Dakota	1,344	866	477
Tennessee	2,823	1,275	1,549
Texas	13,100	3,790	9,310
Utah	377	232	145
Vermont	97	-	97
Virginia	17,980	4,312	13,669
Washington	7,292	1,943	5,349
West Virginia	257	159	98
Wisconsin	791	291	499
Wyoming	-	-	-

Source: Population Reference Bureau, analysis of data from the 2000 Census 1-Percent Microdata Sample. Table developed by African Women’s Health Center, Brigham and Women’s Hospital.¹³¹

APPENDIX B CONT'D.: Prevalence of FGM in the U.S.

Fig. 2: Girls and women living in the U.S. estimated to have had or be at risk of FGM, by metropolitan area

Metropolitan Statistical Area	Total	Under 18	18+
U.S.	227,887	62,519	165,368
New York-Northern New Jersey-Long Island, NY-NJ-CT-PA CMSA	40,813	11,809	29,004
Washington-Baltimore, DC-MD-VA-WV CMSA	33,221	8,308	24,913
Los Angeles-Riverside-Orange County, CA CMSA	18,866	4,077	14,789
Minneapolis-St. Paul, MN-WI MSA	12,708	3,622	9,086
San Francisco-Oakland-San Jose, CA CMSA	9,763	1,869	7,894
Atlanta, GA MSA	8,472	1,883	6,588
Seattle-Tacoma-Bremerton, WA CMSA	6,786	1,745	5,041
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD CMSA	5,859	1,213	4,646
Chicago-Gary-Kenosha, IL-IN-WI CMSA	5,455	1,082	4,373
Houston-Galveston-Brazoria, TX CMSA	6,412	2,138	4,274
Dallas-Fort Worth, TX CMSA	4,977	1,045	3,932
San Diego, CA MSA	6,498	2,680	3,818
Boston-Worcester-Lawrence, MA-NH-ME-CT CMSA	3,585	598	2,987
Detroit-Ann Arbor-Flint, MI CMSA	3,925	1,152	2,773
Portland-Salem, OR-WA CMSA	2,902	517	2,385
Columbus, OH MSA	3,157	1,036	2,121
Phoenix-Mesa, AZ MSA	2,319	935	1,384
Denver-Boulder-Greeley, CO CMSA	1,734	516	1,219
Miami-Fort Lauderdale, FL CMSA	1,221	117	1,105
Providence-Fall River-Warwick, RI-MA MSA	1,247	214	1,033
Other metropolitan areas	47,968	15,965	32,003

Source: Population Reference Bureau, analysis of data from the 2000 Census 1-Percent Microdata Sample. Table developed and designed by African Women's Health Center, Brigham and Women's Hospital.¹³²

***Note:** CMSA refers to Consolidated Metropolitan Statistical Area.

ENDNOTES

1 FGM violates human rights guaranteed in the Universal Declaration of Human Rights and the following international conventions: International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Convention Relating to the Status of Refugees (Refugee Convention) and its Protocol relating to the Status of Refugees; Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); and Convention on the Rights of the Child (CRC). See World Health Organization (WHO), *An update on WHO's work on female genital mutilation (FGM): Progress report* 8 (2011), available at http://whqlibdoc.who.int/hq/2011/WHO_RHR_11.18_eng.pdf. The practice of FGM is specifically addressed in UN General Assembly Resolution 56/128 on Traditional or Customary Practices Affecting the Health of Women and Girls, which reaffirms that “harmful traditional or customary practices, including female genital mutilation . . . constitute a definite form of violence against women and girls and a serious violation of their human rights.” G.A. Res. 56/128, U.N. Doc. A/RES/56/128 (Dec. 19, 2001).

2 UNICEF Innocenti Research Center, *Changing a Harmful Social Convention: Female Genital Mutilation/Cutting* [hereinafter *Changing a Harmful Social Convention*] at 3 (2008), available at http://www.unicef-irc.org/publications/pdf/fgm_eng.pdf.

3 W K Jones, J Smith, B Kieke, Jr, and L Wilcox, “Female genital mutilation. Female circumcision. Who is at risk in the U.S.?” *Public Health Rep.* 1997 Sep-Oct; 112(5): 368–377, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1381943/>.

4 African Women’s Health Center, *Research Performed by the African Women’s Center*, Brigham and Women’s Hospital, available at http://www.brighamandwomens.org/Departments_and_Services/obgyn/services/africanwomenscenter/research.aspx (last modified Feb. 19, 2013).

5 See Els Leye & Alexia Sabbe, *Overview of Legislation in the European Union to Address Female Genital Mutilation: Challenges and Recommendations for the Implementation of Laws* at 10 (2009), available at http://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Expert%20Paper%20EGMGPLHP%20Els%20Leye_.pdf. See also, e.g., Foundation For Women’s Health, Research and Development, *A Statistical Study to Estimate the Prevalence of Female Genital Mutilation in England and Wales: Summary Report* at 9 (2007), available at <http://www.forwarduk.org.uk/key-issues/fgm/research>; Ireland’s National Plan of Action to Address Female Genital

Mutilation (2008) at 1, 12–17, available at <http://www.akidwa.ie/FGM%20Plan%20of%20Action%20Report.pdf>; *Le praticien face aux mutilations sexuelles féminines*, Annex 4, available at http://dl.free.fr/fD4iRj82t/OUVRAGE1_praticien_face_MSF_Versionfinaleseptembre2010.pdf.

6 The official congressional findings accompanying the 1996 federal law’s passage recognized that FGM violates not only international law, but also “the guarantees of rights secured by Federal and State law, both statutory and constitutional.” Pub. L. No. 104-208, § 645(a) (included as a note at 18 U.S.C. § 116).

7 UNICEF Innocenti Research Ctr., *Changing a Harmful Social Convention* at 3.

8 *Id.* at 2.

9 World Health Organization (WHO), *An update on WHO's work on female genital mutilation (FGM): Progress report* [hereinafter *Progress Report*] at 1 (2011), available at http://whqlibdoc.who.int/hq/2011/WHO_RHR_11.18_eng.pdf.

10 *Id.*

11 Human Rights Watch, “*They Took Me and Told Me Nothing*”: *Female Genital Mutilation in Iraqi Kurdistan* 56–63 (2011), available at <http://www.hrw.org/en/reports/2010/06/16/they-took-me-and-told-me-nothing-0>.

12 Amnesty International, *What is female genital mutilation?* (Sept. 30, 1997), AI Index: ACT 77/06/97, available at <http://www.amnesty.org/en/library/asset/ACT77/006/1997/en/3ed9f8e9-e984-11dd-8224-a709898295f2/act770061997en.html>.

13 See World Health Organization (WHO), *Eliminating female genital mutilation: An interagency statement* [hereinafter *Interagency Statement*] (2008), available at http://whqlibdoc.who.int/publications/2008/9789241596442_eng.pdf.

14 See World Health Organization (WHO), *Female genital mutilation: Fact sheet No. 241* [hereinafter *Fact Sheet*] (Feb. 2013), <http://www.who.int/mediacentre/factsheets/fs241/en/index.html>; see also Amnesty Int’l, *What is female genital mutilation?* (Sept. 30, 1997).

15 WHO, *Progress report*. See also Hannah Osborne, “Female Genital Mutilation: 30 Million Girls Still Vulnerable to Practice,” *International Business Times*, Feb. 7, 2013, reporting preliminary data from the UNFPA-UNICEF Joint Programme on FGM/C showing that among the 29 countries studied, “36 per cent of girls aged between 15 and 19 have been cut, while 53 per cent of women aged between 45 and 49 have been subjected to FGM.”

16 *Id.*; see also WHO, *Fact Sheet*.

- 17 Amnesty International, *What is female genital mutilation?* (Sept. 30, 1997).
- 18 According to the World Health Organization, more than 18% of all FGM is performed by health care providers. See WHO, *Fact Sheet*.
- 19 UNICEF Innocenti Research Ctr., *Changing a Harmful Social Convention*.
- 20 *Id.*
- 21 See WHO, *Interagency Statement*.
- 22 See WHO, *Health complications of female genital mutilation*, available at http://www.who.int/reproductivehealth/topics/fgm/health_consequences_fgm/en/.
- 23 See WHO, *Interagency Statement*.
- 24 See *id.*; see also Amnesty International, *What is female genital mutilation?* (Sept. 30, 1997).
- 25 See WHO, *Interagency Statement* at 34.
- 26 *Id.*
- 27 *Id.*
- 28 WHO, *Progress Report* at 3.
- 29 *Id.*
- 30 WHO, *Interagency Statement* at 34.
- 31 See Human Rights Watch, *“They Took Me and Told Me Nothing,”* at 38-39.
- 32 See *id.* at 39; WHO, *Interagency Statement* at 34.
- 33 See Human Rights Watch, *“They Took Me and Told Me Nothing,”* at 39.
- 34 See WHO, *Interagency Statement* at 34; Human Rights Watch, *“They Took Me and Told Me Nothing,”* at 38.
- 35 See Human Rights Watch, *“They Took Me and Told Me Nothing,”* at 38.
- 36 Rossella Lorenzi, “How did female genital mutilation begin?” *Discovery News*, Dec. 10, 2012, available at <http://news.discovery.com/history/female-genital-mutilation-begin-121210.html>.
- 37 UNICEF, *The dynamics of social change: Towards the abandonment of FGM/C in five african countries*, Innocenti Insight, 2010, available at <http://www.unicef-irc.org/publications/618>.
- 38 Amnesty International, *What is female genital mutilation?* (Sept. 30, 1997).
- 39 WHO, *Progress report*; Amnesty International, *What is female genital mutilation?* (Sept. 30, 1997).
- 40 Amnesty International, *What is female genital mutilation?* (Sept. 30, 1997).
- 41 *Id.*
- 42 WHO, *Progress report*.
- 43 An Egyptian woman, quoted in Amnesty International’s report on FGM, stated, “We . . . insist on circumcising our daughters so that there is no mixing between male and female An uncircumcised woman is put to shame by her husband, who calls her ‘you with the clitoris.’ People say she is like a man.” Amnesty International, *What is female genital mutilation?* (Sept. 30, 1997).
- 44 *Id.*
- 45 WHO, *Interagency Statement* at 6.
- 46 WHO, *Fact Sheet*.
- 47 UNICEF Innocenti Research Ctr., *Changing a Harmful Social Convention* at 17.
- 48 WHO, *Progress Report*.
- 49 Amnesty International, *What is female genital mutilation?* (Sept. 30, 1997).
- 50 *Id.*
- 51 *Id.*
- 52 *Id.*
- 53 Human Rights Watch, *“They Took Me and Told Me Nothing,”*
- 54 UNICEF Innocenti Research Ctr., *Changing a Harmful Social Convention* at 12.
- 55 *Id.*
- 56 *Id.* at 12-13.
- 57 Amnesty International, *What is female genital mutilation?* (Sept. 30, 1997).
- 58 See *id.*; Beatrice Paez, *U.S. Bill Would Outlaw FGM “Holidays,”* Inter Press Service News Agency, June 12, 2010, available at <http://ipsnews.net/text/news.asp?idnews=51802>.
- 59 UNICEF Innocenti Research Ctr., *Changing a Harmful Social Convention* at 12.
- 60 UNICEF, *Female Genital Mutilation/Cutting: A Statistical Exploration* 17 (2005), available at http://www.unicef.org/publications/files/FGM-C_final_10_October.pdf.
- 61 According to a statistical study by UNICEF, FGM prevalence is greater among Muslim groups than Christian groups in Benin, Côte d’Ivoire, Ethiopia, Ghana, Kenya, and

Senegal. However, in Niger, Nigeria, and United Tanzania, FGM prevalence is higher among Christian groups, and in Burkina Faso, Central African Republic, Eritrea, Ethiopia, Guinea, and Mali, there is no significant difference between religious groups. UNICEF, *Female Genital Mutilation/Cutting: A Statistical Exploration* at 10.

62 WHO, *Progress Report* at 7.

63 FGM was practiced in Sudanese or Nubian populations before the arrival of Islam, and there is no evidence of FGM in several Muslim countries, particularly in North Africa, including Algeria, Libya, Morocco, and Tunisia. UNICEF Innocenti Research Ctr., *Changing a Harmful Social Convention* at 12.

64 WHO, *Fact Sheet*.

65 TrustLaw, “OIC chief calls for abolition of female genital mutilation,” Dec. 4, 2012, *available at* <http://www.trust.org/trustlaw/news/oic-chief-calls-for-abolition-of-female-genital-mutilation/>.

66 UNICEF Innocenti Research Ctr., *Changing a Harmful Social Convention*.

67 *Id.*

68 Brinda Adhikari & Lara Salahi, “Female Genital Cutting: Affecting Young Girls in America,” ABC World News, June 14, 2010, *available at* <http://abcnews.go.com/WN/WorldNews/female-genital-cutting-affecting-young-girls-america/story?id=10859231>.

69 Amnesty International, *What is female genital mutilation?* (Sept. 30, 1997); Lynn Harris, “Our daughters should not be cut,” [hereinafter “Our Daughters”], *Salon*, Jan. 24, 2010, *available at* http://www.salon.com/life/feature/2010/01/24/fgm_in_america.

70 Amnesty International, *What is female genital mutilation?* (Sept. 30, 1997); Harris, “Our daughters,” *Salon*.

71 See African Women’s Health Center, *Research Performed by the African Women’s Center*, tbl. 4 [hereinafter *Table 4*], Brigham and Women’s Hospital, *available at* http://www.brighamandwomens.org/Departments_and_Services/obgyn/services/africanwomenscenter/FGCbystate.aspx (last modified Feb. 19, 2013).

72 *Id.*, tbl. 5 [hereinafter *Table 5*].

73 Amnesty International, *What is female genital mutilation?* (Sept. 30, 1997).

74 See Lynn Harris, “Female genital mutilation in the U.S.: No compromise” [hereinafter “No Compromise”], *Salon*, June 2, 2010, *available at* http://www.salon.com/life/feature/2010/06/02/fgm_genital_nick; UNICEF Innocenti

Research Ctr., *Changing a Harmful Social Convention* at 11.

75 Nadia Sussman, “After School in Brooklyn, West African Girls Share Memories of a Painful Ritual,” *New York Times*, Apr. 25, 2011, *available at* http://www.nytimes.com/2011/04/26/nyregion/brooklyn-girls-from-west-africa-recall-genital-cutting.html?_r=2&ref=femalegenitalmutilation (“[Some] girls are cut by relatives without their parents’ knowledge while on vacation abroad.”).

76 *Id.* (“In some families, parents oppose female genital cutting, but the decision about whether or not to have it done is not always theirs to make. Many elders in West African communities hold great social authority and do not seek parental permission to have it done to a girl.”); see also Harris, “Our daughters,” *Salon* (“Older relatives with ‘seniority’ often push for the procedure.”).

77 See Paez, U.S. *Bill Would Outlaw FGM ‘Holidays’*, Inter Press Service News Agency (noting that mothers are often treated as having “second-class citizenship within her culture” and “do not have the power to decide whether or not their girls will be cut”).

78 See WHO, *Interagency Statement* at 7 (“[T]here are cases [of FGM] in which some family members, against the will of others, have organized the procedure.”).

79 The University of Arizona Southwest Institute for Research on Women, *Disappearing Parents: A Report on Immigration Enforcement and the Child Welfare System*, May 2011 at 1, *available at* http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/06.09.2011_DisappearingParents.pdf.

80 Pew Research Center, *Unauthorized Immigrant Population: National and State Trends, 2010*, February 2011, *available at* <http://pewhispanic.org/files/reports/133.pdf>.

81 U.S. Department of Immigration and Customs Enforcement, Office of the Director, *Memo: Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens*, June 17, 2011, *available at* <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>.

82 Helen O’Neill, “U.S.-Born Kids Of Deported Parents Struggle As Family Life Is ‘Destroyed,’” *Huffington Post*, Aug. 25, 2012, *available at* http://www.huffingtonpost.com/2012/08/25/us-born-kids-deported-parents_n_1830496.html.

83 See Amnesty International, *What is female genital mutilation?* (Sept. 30, 1997); Harris, “Our daughters,” *Salon*.

84 See Amnesty International, *What is female genital mutilation?*

(Sept. 30, 1997); WHO, *Global strategy to stop health-care providers from performing female genital mutilation* [hereinafter *Global Strategy*] 6 (2010), available at http://whqlibdoc.who.int/hq/2010/WHO_RHR_10.9_eng.pdf at 7; Harris, “No Compromise,” *Salon*; Brinda Adhikari & Lara Salahi, “Female Genital Cutting: Affecting Young Girls in America,” ABC World News.

85 WHO, *Global Strategy* at 7.

86 See Harris, “No Compromise,” *Salon*; Adhikari & Salahi, “Female Genital Cutting: Affecting Young Girls in America,” ABC World News.

87 On April 26, 2010, the AAP issued a policy stating, in part, “[T]he ritual nick suggested by some pediatricians is not physically harmful and is much less extensive than routine newborn male genital cutting. There is reason to believe that offering such a compromise may build trust between hospitals and immigrant communities, save some girls from undergoing disfiguring and life-threatening procedures in their native countries, and play a role in the eventual eradication of FGC. It might be more effective if federal and state laws enabled pediatricians to reach out to families by offering a ritual nick as a possible compromise to avoid greater harm.” See “Policy Statement: Ritual Genital Cutting of Female Minors,” *Pediatrics*, Vol. 125 No. 5, May 1, 2010, pp. 1088-1093, available at <http://pediatrics.aappublications.org/content/125/5/1088.full>. See also Belinda Luscombe, “Has a U.S. Pediatrics Group Condoned Genital Cutting?” *Time Magazine*, May 11, 2010, available at <http://www.time.com/time/health/article/0,8599,1988434,00.html>.

88 See “Policy Statement: Ritual Genital Cutting of Female Minors,” *Pediatrics*, Vol. 126, No. 1, July 2010, available at <http://pediatrics.aappublications.org/content/early/2010/06/07/peds.2010-1568.full.pdf+html>. The president of the AAP explained to media outlets that “We retracted the policy because it is important that the world health community understands the AAP is totally opposed to all forms of female genital cutting, both here in the U.S. and anywhere else in the world.” See Stephanie Chen, “Pediatricians now reject all female genital mutilation,” CNN.com, May 27, 2010, available at <http://www.cnn.com/2010/HEALTH/05/27/AAP.retracts.female.genital.cutting/index.html>.

89 See UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at <http://www.unhcr.org/refworld/docid/3ae6b3712c.html>; UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>.

90 UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at <http://www.unhcr.org/refworld/docid/3ae6b36c0.html>.

91 UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at <http://www.unhcr.org/refworld/docid/3ae6b38f0.html>.

92 UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at <http://www.unhcr.org/refworld/docid/3ae6b3970.html>.

93 See “Female circumcision,” CEDAW General Recommendation No. 14 (9th Session, 1990); “Violence against women,” CEDAW General Recommendation No. 19 (11th Session, 1992); “Women and health,” CEDAW General Recommendation No. 24 (20th Session, 1999), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/>.

94 See WHO, *Interagency Statement*; for a timeline outlining the international response, see WHO, *Fact Sheet*.

95 See *Matter of Kasinga*, 21 I. & N. Dec. 357 (BIA 1996).

96 *Matter of Kasinga*, 21 I. & N. Dec. 357 (BIA 1996). Subsequent case law has also recognized female genital mutilation as an ongoing, often lifelong harm, and established women that have already undergone FGM may also warrant asylum, see *Bab v. Mukasey*, 529 F.3d 99 (2d Cir. 2008).

97 18 U.S.C.A. § 116(a) (West 2011); See Celia W. Dugger, “New Law Bans Genital Cutting in the United States,” *New York Times*, Oct. 12, 1996, available at <http://www.nytimes.com/1996/10/12/nyregion/new-law-bans-genital-cutting-in-united-states.html>.

98 18 U.S.C.A. § 116(c) (“[N]o account shall be taken of the effect on the person on whom the operation is to be performed of any belief on the part of that person, or any other person, that the operation is required as a matter of custom or ritual.”). The U.S. is a party to the ICCPR, CAT, and the Protocol to the Refugee Convention, and one of the original reasons for Representative Patricia Schroeder’s introduction of the current federal FGM statute was to align U.S. law with international human rights obligations. See Federal Prohibition of Female Genital Mutilation Act of 1995, H.R. 941, 104th Cong. (1st Sess. 1995).

99 See Pub. L. No. 104-208, § 644, 110 Stat. 3009-708 (1996).

100 See Pub. L. No. 104-134, §§ 520(b)(1) & (2), 110 Stat. 1321 (1996). The 1997 CDC study based on the 1990 U.S. Census is the result of Congress’s directive to HHS to

compile data on the prevalence of FGM in the U.S. HHS was also required to develop recommendations for the education of medical students about FGM and its health consequences. See Pub. L. No. 104-134, at § 520(b)(3). Furthermore, Congress obligated U.S. executive directors of international financial institutions, such as the World Bank, to oppose non-humanitarian loans to countries that have not undertaken educational steps designed to prevent FGM. See 22 U.S.C.A. § 262k-2 (West 2011).

101 See 18 U.S.C.A. § 116(d) (West 2013), Pub. L. No. 112-239, § 1088, 126 Stat. 1970 (2013).

102 See Girls Protection Act of 2010, H.R. 5137, 111th Cong. (2010); See Girls Protection Act of 2011, H.R. 2221, 112th Cong. (2011).

103 See “National Defense Authorization Act for Fiscal Year 2013,” available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr4310enr/pdf/BILLS-112hr4310enr.pdf>.

104 18 U.S.C.A. § 116(d) (West 2013), Pub. L. No. 112-239, § 1088, 126 Stat. 1970 (2013).

105 UN General Assembly, *Intensifying Global Efforts for the Elimination of Female Genital Mutilations*, 20 December 2012, available at <http://www.awdf.org/wp-content/uploads/2013/01/Resolution-UNGA-English.pdf>.

106 Yasmeen Hassan, “As Global Consensus Accelerates, Obama Strengthens Federal Law Protecting Girls in the Fight Against Female Genital Mutilation,” *Huffington Post*, Jan. 3, 2013, available at http://www.huffingtonpost.com/yasmeen-hassan/new-wins-speed-gains_b_2403941.html.

107 These states are: California, Colorado, Delaware, Florida, Georgia, Illinois, Louisiana, Maryland, Minnesota, Missouri, Nevada, New York, North Dakota, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, West Virginia, and Wisconsin. See AHA Foundation, *Female Genital Mutilation in the U.S. Factsheet*, available at <http://theahafoundation.org/wp/wp-content/uploads/2011/05/AHA-Foundation-FGM-Fact-Sheet-2012.pdf>.

108 See e.g., Md. Code Ann. Health-Gen. § 20-601 (2011) (stating that a person commits FGM when he or she “knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of an individual who is under the age of 18 years”); Del. Code Ann. tit. 11, § 780 (2011) (stating that a person is guilty of FGM when he or she “knowingly circumcises, excises, or infibulates the whole or any part of the labia majora, labia minora, or clitoris of a female minor”).

109 See 720 Ill. Comp. Stat. Ann. § 5/12-34 (2011); Minn. Stat. § 609.2245 (2010); R.I. Gen. Laws § 11-5-2 (2011); Tenn. Code Ann. § 39-13-110 (2011).

110 These states are California (see Cal Pen Code § 273a(a)); Colorado (see Colo. Rev. Stat. §18-6-401(b)(I)); Delaware (see Del. St. Ti. 11 § 780(a)(2)); Florida (see West’s F.S.A. § 794.08(4)); Georgia (see Ga. Code Ann. § 16-5-27(a)(2)); Illinois (see 325 ILCS 5/3(f)); Louisiana (see LA Rev Stat § 14:43.4(A)(2)); Maryland (see Md Code, Health-General § 20-601(b)); Missouri (see V.A.M.S. § 568.065.1(2)); New York (see NY Penal § 130.85.1(b)); Oregon (see ORS § 163.207(1)(b)); and West Virginia (see W. Va. Code, § 61-8D-3a(a)). In addition, Nevada makes it a felony to “aid, abet, encourage, or participate in” FGM. See Nev. Rev. Stat. § 200.5083.1(a).

111 Del. Code Ann. tit. 11, § 780.

112 See Colo. Rev. Stat. 18-6-401(1)(b) (2010); Ga. Code Ann. § 16-5-27; Md. Code Ann. Health-Gen § 20-601; Mo. Rev. Stat. § 568.065 (2011); N.Y. Penal Law § 130.85 (2011); Or. Rev. Stat. § 163.207 (2009); W. Va. Code Ann. § 61-8D-3a (2011).

113 Fla. Stat. Ann. § 794.08(2), (4).

114 Cal Pen Code 273.4(a)-(b)

115 Fla. Stat. Ann. § 794.08.

116 Ga. Code Ann. § 16-5-27.

117 La. Rev. Stat § 14:43.4(A)(3).

118 Nev. Rev. Stat. Ann. § 200.5083 (2011).

119 42 U.S.C.A. § 5106(g)(2) (West 2003).

120 See, e.g., Conn. Gen. Stat. § 46b-120(3) (2011) (defining “abused” to include “a child or youth [who] has been inflicted with physical injury or injuries other than by accidental means”); 23 Pa. Cons. Stat. § 6303(b)(1) (2011) (including in the definition of “child abuse” “[a]ny recent act or failure to act . . . which causes nonaccidental serious physical injury . . . [or] imminent risk of serious physical injury to . . . a child under age 18”). See also Ala. Code § 26-14-7.2; Alaska Stat. § 47.17.020(d); Idaho Code § 16-1602; Ind. Ann. Code § 31-34-1-15; Iowa Ann. Stat. § 232.68; Kan. Ann. Stat § 38-2202; Kentucky Rev. Stat. § 600.020; La. Ch. Code art. 603; Maine Ann. Stat. Tit. 22, § 4010; Mich. Comp. Laws § 722.634; Miss. Ann. Code § 43-21-105; N.H. Rev. Stat. § 169-C:3; N.J. Ann. Stat. § 9:6-8.21; N.M. Ann. Stat. § 32A-4-2; Ohio Rev. Stat. §§ 2151.03(B); Okla. Ann. Stat. Tit. 10A § 1-1-105; Penn. Cons. Stat. Tit. 23 § 6303; Utah Ann. Code § 78A-6-105; Vermont Ann. Stat. Tit. 33 § 4912; Virginia Ann. Code § 63.2-100; Wyo. Ann. Stat. § 14-3-202.

121 Cal Pen Code § 273a(a), § 273.4(a); 325 Ill. Comp. Stat. Ann. § 5/3(f).

122 R.I. Gen. Laws § 11-5-2 (2011).

123 In 2010, a 35 year-old mother in Georgia was accused

of performing FGM on her infant daughter. See Annie McCallum, “LaGrange crime: Woman charged with female genital mutilation, 2nd-degree cruelty to children,” *Ledger-Enquirer*, Mar. 11, 2010, available at <http://www.ledger-enquirer.com/2010/03/11/1047702/lagrange-woman-charged-with-female.html>; Julia Lalla-Maharajh, “Female Genital Mutilation in Georgia, USA,” *Huffington Post*, Mar. 15, 2010, available at http://www.huffingtonpost.com/julia-lallamaharajh/female-genital-mutilation_b_498529.html.

124 See e.g., Ala. Code § 26-14-7.2; Alaska Stat. § 47.17.020(d); Idaho Code § 16-1602; Ind. Ann. Code § 31-34-1-15; Iowa Ann. Stat. § 232.68; Kan. Ann. Stat. § 38-2202; Kentucky Rev. Stat. § 600.020; La. Ch. Code art. 603; Maine Ann. Stat. Tit. 22, § 4010; Mich. Comp. Laws § 722.634; Miss. Ann. Code § 43-21-105; N.H. Rev. Stat. § 169-C:3; N.J. Ann. Stat. § 9:6-8.21; N.M. Ann. Stat. § 32A-4-2; Ohio Rev. Stat. §§ 2151.03(B); Okla. Ann. Stat. Tit. 10A § 1-1-105; Penn. Cons. Stat. Tit. 23 § 6303; Utah Ann. Code § 78A-6-105; Vermont Ann. Stat. Tit. 33 § 4912; Virginia Ann. Code § 63.2-100; Wy. Ann. Stat. § 14-3-202.

125 See Harris, “Our Daughters,” *Salon* (stating that mandated reporters may wonder, “Is it a ‘cultural’ practice that others somehow must respect? Is reporting it anti-Muslim?”).

126 International Center for Reproductive Health (ICHR), *Responding to Female Genital Mutilation in Europe: Striking the Right Balance Between Prosecution and Prevention* 40 (2009), available at http://www.icrh.org/files/ICRH_rapport%202009_def%20-%20high%20resolution.pdf.

127 See HM Government, *Multi-Agency Practice Guidelines: Female Genital Mutilation* (2011), available at <http://www.fco.gov.uk/resources/en/pdf/travel-living-abroad/when-things-go-wrong/multi-agency-fgm-guidelines.pdf>; Dep’t of Health, *Working Together to Safeguard Children* (1999) at 74, available at http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4075824.pdf (noting that “[a] local authority may exercise its powers under s.47 of the Children Act 1989 if it has reason to believe that a child is likely to be or has been the subject of FGM”).

128 WHO, *Female genital mutilation and other harmful practices*, available at <http://www.who.int/reproductivehealth/topics/fgm/prevalence/en/index.html>.

129 UNICEF Innocenti Research Ctr., *Changing a Harmful Social Convention* at 4.

130 AWHC states that the numbers in this table “only represent the total number of African immigrants and refugees in an individual state. Because the number of women is not broken down by reported place of birth or ancestry, estimates of the prevalence of FGC cannot be

obtained.” AWHC, note to *Table 4*.

131 AWHC, *Table 4*.

132 AWHC, *Table 5*.



Sanctuary
for Families

PO Box 1406
Wall Street Station
New York, NY 10268
212.349.6009
www.sanctuaryforfamilies.org

FACULTY BIOGRAPHY

ENGY ABDELKADER, ESQ. co-directs the Immigration Intervention Project at Sanctuary for Families - New York's largest not for profit agency serving the legal, clinical, shelter and economic needs of victims of domestic violence, gender based violence and human trafficking. She is an award-winning attorney with two U.S. law degrees including credentials from the University of Pennsylvania Law School where she served as a teaching fellow and graduated with academic distinction.

At Penn Law, her graduate thesis explored the intersection of Islamic law and women's rights. Beginning in 2013, Ms. Abdelkader joined the Organization for Security and Cooperation in Europe (OSCE) as the US representative on an advisory panel of experts on religious freedom. She is the recipient of an invitation only Speaker and Specialist Grant awarded by the US State Department in gender, human rights and Islam. She lectures and conducts workshops and seminars for audiences sponsored by US Consulates.

As chair of the American Bar Association's (ABA) Committee on National Security and Civil Liberties, a part of the Section of Individual Rights and Responsibilities, she engages in policy analysis and designs cutting edge legal educational programs on 'hot button' issues of the day. During her chairmanship, the Committee was voted the winner of the 2014 Committee Excellence Award for providing leadership to the legal profession in protecting and advancing human rights, civil liberties and social justice.

Ms. Abdelkader is a Board Member of the Sisterhood of Salaam Shalom, a New Jersey based nonprofit dedicated to enhancing interfaith relations between Muslim and Jewish women throughout the US. She serves as an appointed member of the New Jersey Supreme Court Board on Continuing Legal Education, New Jersey State Bar Foundation Respect Newsletter Editorial Advisory Board, New Jersey Supreme Court Committee on Minority Concerns, and the New Jersey State Bar Association Membership Committee. Contact: EAbdelkader@sffny.org

HONORABLE MATTHEW D'EMIC is a graduate of Fordham University and Brooklyn Law School. He was appointed to the bench in 1996. In March, 2014 he was appointed Administrative Judge for Criminal Matters in the Second Judicial District Supreme Court. In addition to his administrative duties, Judge D'Emic continues to preside over the Brooklyn Domestic Violence Court and Brooklyn Mental Health Court.

Judge D'Emic is a member of the New York State Judicial Committee on Women in the Courts and a past chair of the Supreme Court Gender Fairness Committee. He is co-chair of the Alternatives to Incarceration and Diversion Committee of the American Bar Association. He also served on Mayor Bloomberg's Steering Committee of the Citywide Justice and Mental Health Initiative and Mayor DiBlasio's Behavioral Health and Criminal Justice Task Force.

Judge D'Emic has been recognized for his work in domestic violence and mental health and frequently lectures on these topics. He is also an adjunct professor of clinical law at Brooklyn Law School.

MICHAEL G. DOWD, ESQ. is dedicated to confronting and fighting injustice. He has been long-recognized by his peers and the press for his courtroom skills, particularly his zealous courtroom advocacy on behalf of his clients. Even before the scandal that rocked the Catholic Church in 2002, Mike Dowd singularly stood out as a tireless champion of victims of sexual abuse. And since 2002, he has represented more victims of clergy sexual abuse in the New York metropolitan area than any other attorney. He has represented victims against the Boy Scouts of America, the Harlem Boys Choir, a synagogue and a number of large corporations.

Mr. Dowd is a pioneer in the battered women's movement. In 1979, when few heard of the problem of domestic violence, Mr. Dowd successfully defended a battered woman who killed her husband. He is also the founding director of the Pace University Women's Justice Center and the recipient of awards for his work on behalf of battered women.

Mr. Dowd's legal advocacy efforts have attracted the attention of local, national and international media throughout his long career. Numerous interviews with him have appeared in the New York Times, New York Daily News, New York Post, and he has appeared on numerous television news programs including the CBS Evening News, ABC's Primetime Live, Bill O'Reilly and all the major New York metropolitan local news shows.

Mr. Dowd is a graduate of St. John's University School of Law. He is admitted to practice law in New York and U.S. District Court, Southern and Eastern Districts of New York. He has had *pro hac vice* admissions in a number of other states. In addition to his representation of victims of sexual abuse and domestic violence, as a criminal defense attorney he has zealously represented hundreds of defendants in federal and criminal court on a variety of serious matters. Contact: mdowd@mgdowdlaw.com

JORDAN GREENBAUM, MD is the medical director of the Stephanie V. Blank Center for Safe and Healthy Children at Children's Healthcare of Atlanta. Dr. Greenbaum obtained her medical degree from Yale School of Medicine, and completed a residency in Anatomic Pathology at Cedars Sinai in Los Angeles, and a forensic pathology fellowship at the Office of the Chief Medical Examiner in New York. She has spent the majority of her career working in the field of child maltreatment, and currently provides medical evaluations at Children's and training at the local, regional and national level. She is a past president of the American Professional Society on the Abuse of Children. Contact: Jordan.Greenbaum@choa.org

CASEY GWINN, JD serves as the President and Co-Founder of the Family Justice Center Alliance and is the visionary behind the Family Justice Center Movement, first proposing the concept of the Family Justice Center model in 1989. He is a national expert on domestic violence, including prosecution, strangulation, and best practices and an author. Prior to this position, Casey was the elected San Diego City Attorney. He has been recognized by *The American Lawyer* magazine as one of the top 45 public lawyers in America.

Prior to entering elected office, Mr. Gwinn founded the City Attorney's Child Abuse and Domestic Violence Unit, prosecuting both misdemeanor and felony cases. In 1993, the National Council of Juvenile

and Family Court Judges recognized his Child Abuse/Domestic Violence Unit as the model domestic violence prosecution unit in the nation. During his tenure, the Unit's work was honored for playing a major role in the 90 percent drop in domestic violence homicides in the City of San Diego over the last twenty years. San Diego now has the lowest domestic violence homicide rate of any major city in the nation.

One of Mr. Gwinn's great personal passions is Camp HOPE, the unique camping initiative he founded at the San Diego Family Justice Center. Camp HOPE is the first specialized camp in America focused exclusively on children exposed to domestic violence.

Mr. Gwinn's work has been recognized by many including Oprah Winfrey and President George W. Bush. He is the recipient of several awards including Sanctuary for Families' Abely Award for Leading Women and Children to Safety. Mr. Gwinn is an honors graduate of Stanford University and UCLA School of Law. Contact: Casey@nfcja.org

HONORABLE RACHEL HAHN was elected November 4, 2014 to serve as a judge in the Westchester Family Court beginning in January 2015. She has been Coordinator for the New York State Office of Court Administration, Attorney for the Child Contracts since September 2008. She has served as Counsel to the Office of Matrimonial and Family Law Study and Reform and Executive Director of the New York State Judicial Institute on Professionalism in the Law.

From 2004-2007, Ms. Hahn was Chief Court Attorney for the New York City Family Court, and sat as a Court Attorney Referee for adoption cases. Prior to holding that position, Ms. Hahn was Executive Assistant to the Hon. Joseph M. Lauria, who was the Administrative Judge of the New York City Family Court. Ms. Hahn co-authored the article, Expediting Permanency for Children With 588 Adoptions, published in the March/April 2007 issue of the New York State Bar Association Journal.

Ms. Hahn serves on the working group of the New York State Unified Court System Family Violence Task Force and as a member of the Statewide Advisory Committee on Counsel for Children as well as the Attorneys for Children Advisory Committee for the Ninth Judicial District. She has served as a volunteer mediator for the Westchester Mediation Center of CLUSTER. Ms. Hahn graduated from the Pennsylvania State University and Touro Law School. Contact: rhahn@nycourts.gov

HONORABLE MARY ANNE LEHMANN is a retired Binghamton City Court judge and acting Broome County Court Judge. She is the first woman elected to a state bench in Broome County's history (1996). She was reelected in 2006. Prior to that, she served 12 years in the DAs Office, eight of those as the head of felony drug prosecutions. She was cited by the US DEA/Department of Justice in 1995 for outstanding contributions in the field of drug law enforcement.

In 1997, Judge Lehmann was named Broome County Council of Women's "Women of Achievement." In 2000, she received a Congressional Citation, in 1998 and 2000 she received two Mayoral Citations, in 2001, she was named to the American Registry of Outstanding Professionals, in 2002, she received the YWCA's Alice Mills award, in 2004, she received the Crime Victims Assistance Center's Lighthouse award,

and in 2007, she received a citation from the SOS Shelter, all for her work in the area of domestic violence.

Judge Lehmann founded the Domestic Violence Part of the Binghamton City Court, and is the author of *Domestic Violence Cases, Orders of Protection and Firearms* which is utilize statewide to train judges about their responsibilities in this area. Judge Lehmann lectures other judges statewide in the area of domestic violence. She was a presenter at the Third Judicial District Domestic Violence Seminars in Saratoga Springs in 2003 and 2005. She also assist other judges and domestic violence court teams by training them in their responsibilities as a Domestic Violence Court, including Cortland, Westchester, Buffalo, Cohoes, Ryetown, Cooperstown and the Judicial Institute in White Plains, New York. She lectures semi-annually at the regional magistrates training courses in Binghamton, Oneonta, Dryden and Syracuse, New York. She is a graduate of Colgate University and Albany Law School.
Contact: judgelehmann@stny.rr.com

HONORABLE LAWRENCE K. MARKS has performed a key management, policy and legal role in the state court system for many years. In April 2012, he was appointed First Deputy Chief Administrative Judge, the second-ranking administrative official in the court system. In that role, he assists the Chief Judge and the Chief Administrative Judge in all aspects of the administration and operation of the Unified Court System. His responsibilities include working with courts throughout the state in developing programs and strategies to address case backlogs, enhance case processing efficiency and otherwise improve the delivery of justice. He also supervises the court system's Office of Policy and Planning, which oversees the state's problem-solving and specialized courts.

Prior to his current assignment, Judge Marks served from 2004 to 2012 as Administrative Director of the Office of Court Administration, responsible for day-to-day management of that office. He previously served from 1998 to 2003 as Special Counsel to the Chief Administrative Judge and from 1991 to 1997 as OCA's Deputy Counsel for Criminal Justice. Prior to joining the court system, he was a senior supervising attorney with the Legal Aid Society in New York City, in private practice and a law clerk to U.S. District Judge Thomas C. Platt.

In 2009, he was appointed by Governor David Paterson as a Judge of the Court of Claims. He was also appointed as an Acting Supreme Court Justice at that time. In addition to his administrative responsibilities, Judge Marks also handles an active caseload in the Commercial Division of the Supreme Court, New York County.

Judge Marks is the editor and co-author of *New York Pretrial Criminal Procedure* (Volume 7 of West's *New York Practice Series*), and the author of numerous government reports and several law review articles. He has also been an adjunct professor at Brooklyn Law School and the John Jay College of Criminal Justice graduate program.

He is a graduate of the State University of New York at Albany (*magna cum laude*) and Cornell Law School (*cum laude*), where he received a full-tuition scholarship and was an editor of the law review.

SHEILA W. SCHWANEKAMP, ESQ. is a Court Attorney Referee for the New York State Unified Court System in the 8th Judicial District. She has worked as an attorney in the New York State court system for thirty two years where she currently serves as the 8th Judicial District Coordinator for the Domestic Violence Courts and the seven Integrated Domestic Violence Courts within the District. As representative of the 8th District Administrative Judge, Ms. Schwanekamp has coordinated the development and implementation of these problem solving courts in conjunction with the OCA Office of Policy and Planning. Ms. Schwanekamp also hears cases as a Court Attorney-Referee in the Erie County and Niagara County Integrated Domestic Violence Courts and Expedited Matrimonial Parts in the 8th Judicial District.

Ms. Schwanekamp has been involved with the development of the community collaboration resulting in the Family Justice Center of Erie County and the court related video conferencing between the FJC and Erie County Family Court. Additionally, she has served as the Coordinator for the 8th Judicial Alternative Dispute Resolution Project and is currently the Matrimonial ADR Coordinator.

Ms. Schwanekamp served as the 8th Judicial District Liaison to the NYS Parent Education Board and continues to be involved with district wide programs for parent education and serves as liaison for development and implementation of supervised visitation programs in the District. Ms. Schwanekamp continues to work on numerous special projects in the 8th Judicial District involving collaborative efforts between the courts and the community. Contact: sschwane@nycourts.gov

SARA SHOENER, DrPH is a researcher focused on strengthening strategies to reduce family violence. Her work includes ethnographies, needs assessments, and program evaluations related to a broad range of anti-violence projects, and has been featured in national print and online publications. Her forthcoming book details the results of her ethnographic research on intimate partner violence survivors' structural barriers to long-term safety in the United States. Dr. Shoner is a Harry S. Truman Scholar who obtained her DrPH in Sociomedical Sciences and her MPH in Health Promotion from Columbia University's Mailman School of Public Health. She is currently a research consultant for New York City's Human Resources Administration. Contact: sjs2162@columbia.edu

HARRIET R. WEINBERGER, ESQ. has been the Law Guardian Director for the Appellate Division, Second Judicial Department, since 1989. Prior to her appointment by the Appellate Division, she served as an Assistant District Attorney in Kings County.

Earlier in her career, Ms. Weinberger was a member of the Juvenile Rights Division of the New York City Legal Aid Society, and before that, she was in private practice where, among other clients, she represented the Queens County Society for the Prevention of Cruelty to Children.

Ms. Weinberger has lectured extensively on child welfare related issues at various law schools including Fordham, St. John's, Pace and Hofstra; and at numerous continuing legal education programs throughout the State of New York. She has participated as a trainer for the City of New York Law Department, Family Court Division and has served as a lecturer for the Office of Court Administration at its annual judicial training.

Ms. Weinberger is a member of many committees including the New York State Bar Association Committee on Children and the Law, the New York City Family Court Advisory Council, the New York State Attorneys for Children Advisory Committee, the Appellate Division, Second Judicial Department's four Attorneys for Children Advisory Committees, and the Assigned Counsel Advisory Committee for the Second and Eleventh Judicial Districts. Ms. Weinberger served on the New York State Matrimonial Commission from 2004 to 2006.

In 2013, Ms. Weinberger was the recipient of the Howard A. Levine Award for Excellence in Juvenile Justice and Child Welfare, presented by the New York State Bar. In 2006, Ms. Weinberger was the recipient of the Stephanie E. Kupferman Juvenile Justice Award in recognition of her outstanding achievement involving juveniles and the law, presented by the Women's Bar Association of the State of New York. In 2003, Ms. Weinberger was the recipient of the Katharine A. McDonald Award for excellence in service to the New York City Family Court, presented by the New York City Bar Association. She has also been honored by the Nassau County Bar Association Family Law and Procedure Committee in 1993 and again in 2002. Contact: hweinber@nycourts.gov